Supreme Court, U. S.
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APPENDIX

Volume 3.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,
Petitioner,

v.

PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.

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RICHARD DAVIS, called as a witness in behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Davis, what is your home address?

A. 8 Highland Drive, North Caldwell, New Jersey.

Q. Do you have a place of business?

A. Yes. My office address is 140 Market Street,

[1747]

Paterson, New Jersey.

Q. What is your business?

A. I am employed by Treadway Companies, Inc.

Q. And what position do you have within the Treadway Companies, Inc.?

A. I am vice president of that company and director of bowling operations.

Q. For how long have you held that position?

A. Well, I have been with the company since 1969 as director of bowling operations.

I became a vice president in 1970, the following year.

• • •

[1749]

Q. Then what did you do next to make a living?

A. Well, I had become interested in the bowling industry, which was beginning to sprout at that time. And I found what I thought was a very good location in Freeport, Long Island, where there was no bowling center, and with some associates I organized a group of investors, and we opened a 44-lane bowling center in Freeport in August, I believe it was, of 1959.

We were quite successful the first year. And the following year, with another group of investors, we opened a 52-lane bowling center in West Boyleston, Massachusetts, which is a suburb of a large city, Worcester, Massachusetts. We opened that in September of 1960, I believe it was.

Q. Who is the "we" to whom you are referring?

A. Well, I had one or two associates who were becoming active in the business with me. And we had, in each center, nine or ten other investors.

Some of the same people who had invested in Freeport also invested in West Boyleston Bowl, Incorporated.

Q. And you say you were successful in Freeport.

[1750]

Q. How did you fare in West Boylestown?

A. Well, not so well, Mr. Hoffmann.

• • •

[1753]

Q. Were you successful in the operation of West Boyleston Bowl?

A. No, Mr. Hoffmann. We opened in 1961. We hung on for about seven years. And we closed in 1968.

[1754]

Q. Now, sir, in 1968 did you and your associates have any bowling centers that you were operating?

A. Well, subsequent to opening West Boyleston we opened a 64-lane center in Brooklyn called Strike and Spare Lanes. I wasn't as actively involved in that, but I did take a part in the syndication of that center.

The following year, 1961, with many of the same people who had been involved in West Boyleston Bowl,

we opened another center in Massachusetts, in Framingham, Massachusetts——

The Court: Framingham?

The Witness: Framingham.

A. (Continuing.)—which had 42 lanes. That was called Bowlers' World.

And in the following year, 1962——

Q. Sorry. Did you give us the name for the one in Framingham?

A. Bowlers' World.

In the following year, in 1962, with still another group, a small group, we opened a 48-lane center—in August, I believe—in Queens, New York, called Astoria Recreation. That had 48 lanes.

Q. Any others?

A. No, that was enough.

Q. Mr. Davis, which center, if any, was known

[1755]

by the name of Lincoln Lanes?

A. Lincoln Lanes was one of our competitors in Worcester, Massachusetts.

Q. And when you say competitor, you mean competitive with what?

A. It was competitive with West Boyleston Bowl. It opened at about the same time as West Boyleston Bowl. And it was one of five centers that opened within that two-year period in the Worcester market.

Q. How far away was Lincoln Lanes from West Boyleston Bowl?

A. Well, in miles, I would have to say it was about three or four miles. It was about a ten- or fifteen-minute ride.

Q. Was West Boyleston Bowl located on any main road or highway?

A. Yes, West Boyleston Bowl was located on the north side of Worcester, on the main road going out of Worcester, which was Route 12. We were about a mile, perhaps, from the city line. We were about ten minutes from downtown Worcester. Worcester is a very large city, has about 175,000 people.

Q. And in relation to your description of Worcester, where was Lincoln Lanes located?

A. Lincoln Lanes was really pretty much in the heart

[1756]

of Worcester. As I recall, it would be just west of the center of Worcester, in a large shopping center called Lincoln Plaza.

Q. And by automobile how far apart were the two centers?

A. Ten or fifteen minutes, I would say.

Q. And in terms of mileage, what would you say?

A. I think I said before I would estimate three or four miles.

Q. In what you call the Worcester area, you say there was a total of three or four centers?

A. There were five centers within about a 15-month period.

Q. Do you know how many are there today?

A. Three. Three of the five remain. One of them has converted half its lanes to candlepins. But three of those new centers that opened in 1960 and 1961 are still in business.

Q. Which are the ones that are no longer in business?

A. Well, in addition to our center, which closed in 1968, there was a 60-lane center that had opened—I believe

in 1961—to the north of us, called Tri-Town Lanes. That was just to the north of us. And that lasted for about—they opened in '61—I think they

[1757]

closed around '63 or '64. They were only open for three or four years.

• • •

[1769]

RICHARD DAVIS, being previously duly sworn, resumed the stand and testified further as follows:

The Court: You are still under oath, Mr. Davis, right, sir?

The Witness: Yes.

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Davis, just before we recessed last night you referred to your center you and your associates had in the Worcester area?

A. Yes.

Q. And how long did you hold that center?

[1770]

A. It opened in September of 1960, and we closed in August of 1968.

Q. And—

The Court: What center is that, for the benefit of the jury?

The Witness: West Boyleston Bowl, Massachusetts.

Q. Can you tell us whether West Boyleston was a profitable operation?

A. No, it was never profitable.

Q. Now, you mentioned the opening of Lincoln Lanes.

Are you familiar with that center?

A. Very much so, Mr. Hoffmann.

Q. And it was not far from West Boyleston Bowl; is that right?

A. It was our chief competition actually.

Q. How big a center was it?

A. Lincoln Lanes has 56 lanes.

Q. Tell me, sir, did you in the operation of West Boyleston Bowl experience any aggressive acts of competition from Lincoln Lanes?

A. In which period, Mr. Hoffmann; before Brunswick took it over, or after?

Q. Well, when did Brunswick take it over?

[1771]

A. Brunswick took over Lincoln Lanes in 1965, I believe, in the latter part of 1965.

I'm not sure of the exact date.

Q. Addressing yourself, then, and I am grateful to you for pointing out the weakness in my question, addressing yourself then to the period after Brunswick took it over, did you experience any aggressive acts of competition from Brunswick?

If so, tell us what it was.

A. We did, Mr. Hoffmann, and I can't disrelate it to what had happened before, but they had the usual BCOD promotions, if I may use that word.

They had the Bowl-Your-Way-to-Europe, they had the junior program.

But the biggest problem we had really was that they offered our leagues—it is so hard to describe this without relating what happened before.

Q. Go ahead and tell us as briefly as you can what happened before.

A. You see, what happened in the Worcester area was just terrible, when five centers opened up so quickly in a market where nobody knew how to bowl tenpins.

I think I mentioned yesterday there were 175 people, but within 15 months or so from the time we opened, Lincoln Lanes and our center were the first two

[1772]

to open, there were suddenly, I believe, 268 lanes in addition to a lot of candlepin bowling establishments, most of which was older, although there was one new candlepin establishment, too, I think it was called Colonial Lanes in the northwest part of Worcester.

It was very obvious that these five centers couldn't make it. We were doing about 6,000 lines per lane, which was terrible.

Q. You were a tenpin center?

A. The five I am referring to were all tenpin centers, the ones that opened in 1960, 1961.

We were all doing terribly. It was obvious that they wouldn't all survive.

It was equally obvious if two or three survived they would do all right because here was a market there, but we were determined to be one of the survivors.

We thought we had an excellent chance for two reasons: Number 1, we were the only one that had owner management; more important, Number 2, we had a very, very low rent. We were paying $34,000 rent for 52 lanes, it was like $600 a lane, where the normal rent would be $1,000 per lane.

So this gave us a very low break-even. And we thought we could survive.

Well, within a couple of years our hopes were

[1773]

strengthened because Sixty Lanes closed to the north of us, then Town & Country in Shrewsbury converted 20 of their 40 lanes to candlepins.

Then we heard that Lincoln Lanes was going bankrupt. Had that happened there would only be 132 lanes, and we felt we would make it.

[1774]

So we were horrified when Brunswick took over the center. In fact, I visited the center during that transition period. They had a man standing there with a little notebook—he was called a keeper—and he recorded every transaction.

Well, shortly after they took over, they began to offer our leagues 8 o'clock starting time. Now, we attempted over the years—and we have been successful—we had doubled our league business in the first four or five years—we had attempted to have two shifts at night.

We had the one league at 6:45 and we had another league at 9. We weren't full, by any manner or means, but we were beginning to develop that kind of a schedule.

When Brunswick offered 8 o'clock starting time to our leagues, then we were really hurt. And over the next three years——

The Court: Wait a minute.

Mr. McNeill: Excuse me. I didn't want to interrupt. I have been trying to find the end of a sentence.

If Mr. Davis is going to testify about what happened to the leagues bowling in his house, he should be specific, giving the names of the leagues,

[1775]

the league captains, or secretaries, or whatever, rather than just a general statement that his leagues were being approached by Brunswick and being offered a certain—a different starting time.

The Court: No, I think that is a function of cross-examination. If he can't remember, that is something for the jury to weigh.

Overruled.

Proceed.

A. (continuing) Well, when this happened, we began to go downhill. And, also, it became obvious that Lincoln Lanes was going to stay open. Our business began to drop. We had never been able to make the full payments to AMF, but as long as we were making some progress, and our business was improving, AMF kept refinancing our debt, because they felt that eventually we would get out of the woods.

But once this stopped, in '67 and '68, and we were going nowhere, finally AMF came in and repossessed the equipment and removed it from the center. So, we lost $190,000 in that particular transaction.

Q. You have had experience with operating both AMF and Brunswick lanes, is that so, that is, Brunswick equipped lanes and AMF equipped lanes, is

[1776]

that so?

A. Yes, sir.

Q. Can you tell us, from that experience, whether there is any considerable difference in the carrying charges—fixed costs of a center leasing from AMF and a center purchasing on a conditional bill of sale from Brunswick?

A. It works out pretty much the same, Mr. Hoffmann. You realize that there are two parts. There is the purchase of what has been called the lanes and the pinsetters are separate transactions.

And the lanes, which include the settees, and the lockers, and even a lot of maintenance equipment, that is all in one package. That is purchased by the AMF proprietor, or the Brunswick proprietor—or was purchased—on very competitive prices, financing and interest charges.

The only difference is that in the beginning AMF leased the pinspotter for ten years at a rental of 10 cents a game, with a minimum rental of $800 a year, whereas, the Brunswick proprietor purchased the machine and paid for it over an eight-year period.

So that the combination of interest and depreciation that the Brunswick proprietor would have was the same or slightly less than the rental that the AMF

[1777]

proprietor paid to AMF.

So from a profit and loss standpoint, the Brunswick proprietor was a little better off than the AMF equipped proprietor. From a cash flow point of view, it depended upon the lineage that the AMF center did.

But generally, it worked out to about the same.

Originally, we considered both types of equipment, and from an arithmetic point of view, there was very little difference. There were other considerations that made us to decide to go with one company or the other.

[1778]

Q. You spoke of seeing a keeper at Lincoln Lanes. Do you know what a keeper is?

A. I was told afterwards that that is a——

Mr. McNeill: Excuse me. If this is a hearsay statement, I move to have it stricken.

The Court: Well, you are objecting. I sustain the objection.

Do you know what a keeper does?

The Witness: I know what this keeper did.

The Court: Tell the jury about it.

The Witness: This keeper had a little notebook, and he recorded all of the cash that was being taken in. If a customer came to the desk——

The Court: What was he, a manager?

The Witness: No, he was in uniform. He was standing on the other side, on the customer's side of the desk with a little note book and he was recording all of the receipts.

By Mr. Hoffmann:

Q. When did you see this keeper in action?

A. Well, when we heard that Brunswick was taking over Lincoln Lanes, we went over to see if it was true. I went over with my associate. And there were no signs up at that point, but there was the keeper.

Later they put up the signs and it was known as

[1779]

Brunswick Lincoln Lanes.

Q. When did your center cease doing business?

A. 1968, in August—in July or August.

Mr. Hoffmann: I would like to read to the jury, if I may, from Plaintiff's Exhibit 47 in evidence, entry number 200.

The Court: Yes.

Mr. Hoffmann: On the bottom of the second page:

Lincoln Lanes, Worcester, Massachusetts.

1965, the loss item, $28,695; 1966, a loss item $14,192; 1967 a loss item $8,828.

Q. The year that West Boyleston went out, again, was that—

A. August 1968.

Mr. Hoffmann: 1968, a plus item, $3,280. This is for Lincoln Lanes. And then 1969, a plus item, $20,646; 1970, plus $31,960; 1971, $36,112; 1972, $17,753.

Q. Now, sir, in relation to your operation of bowling centers, did you have any other centers in which you had an interest, which were confronted with Brunswick competition?

A. Well, in Freeport, which was the center to which I devoted most of my time personally, we were two miles

[1780]

from Roosevelt Lanes, which was taken over by Brunswick in 1965. And, generally speaking, we thought we had a nicer center than Roosevelt.

The only problem we had with Roosevelt was that they were always a nickel less for bowling than we were. I only had one league problem with Roosevelt Lanes.

Q. Were you a member of any of the bowling proprietors' associations?

A. Yes, Mr. Hoffmann, wherever we operated that there was a bowling proprietors' association, we always joined and were active.

Q. And did you belong to the proprietors' association which functioned in the area of Nassau County?

A. Yes, I was most active in that particular association, in Nassau County.

Q. Did you hold any office in it?

A. Yes, I held several offices. In—I believe it was in 1964 and 1965 I was president of that association for two years—.

Mr. Hoffmann: I would like to have marked, please, as Plaintiff's Exhibit 62 for identification what appears to be copy of a letter, Richard A. Davis to Mr. John L. Hanigan, president of Brunswick Corporation, under date April 16, 1965.

[1781]

(Marked Exhibit P-62 for identification.)

Mr. Hoffmann: And I would like to have marked as Plaintiff's Exhibit 63 for identification a copy of a letter, Milton Rudo of Brunswick Corporation to Mr. Richard A. Davis, president, Nassau Bowling Proprietors Association, under date of May 3, 1965.

(Marked Exhibit P-63 for identification.)

Q. Mr. Davis, I show you Plaintiff's Exhibit 62 for identification and ask if you can tell us what it is?

A. This is a letter that was sent by me, acting as president of the Nassau Bowling Proprietors Association, to the president of the Brunswick Corporation in 1965.

• • •

[1788]

Court Reporter:

"This is a letter that was sent by me acting as president of the Nassau Bowling Proprietors Association to the president of the Brunswick Corporation in 1965."

The Court: Then he said under what circumstances, and then Mr. McNeill interrupted. I think Mr. Davis should be alerted that this Court will not permit you to testify as to the second paragraph of that communication.

I have made a ruling heretofore in regard to the resolution passed at the Puerto Rican convention. Mr. Hoffmann may interrogate with that admonition in mind.

Mr. Hoffmann: May I now offer into evidence both plaintiff's 62 and 63?

The Court: Both into evidence.

(Exhibits P-62 and P-63 received and marked

[1789]

into evidence.)

Q. Mr. Davis, looking at plaintiff's 62, that is to say, the letter to Mr. Hanigan, that was the letter sent by you, was it not, in your capacity of president of the Nassau Bowling Proprietors Association?

A. It was.

Q. And would you be good enough to read aloud the first paragraph, and just the first paragraph, please, of the letter?

That's the one starting, "Our association."

A. "Dear Mr. Hanigan.

"Our association views with alarm and deep concern the assumption by the Brunswick Corporation of the ownership and operation of certain bowling establishments."

Q. And then would you read aloud the very last paragraph, the one starting, "We would—"

A. "We would appreciate a policy statement of your company's position on this matter at your earliest convenience."

Q. Now, sir—

The Court: I'm not sure that the jury recalls, but this is a letter—tell them, Mr. Hoffmann.

Mr. Hoffmann: Addressed to Mr. John L.

[1790]

Hanigan, who is the president of the Brunswick Corporation, and the letter is April 16, 1965.

Q. Do you notice some handwritten material up at the top of the exhibit?

A. Yes, there is a note that it was received, in handwriting in the upper left it says, "Milton Rudo, please hand deliver," and there are some initials—

Q. They look, do they not, like J. L. H.?

A. Yes.

Q. I address your attention to plaintiff's 63.

A. I don't have a copy of that.

Q. Would you be good enough to read the paragraph—

"Dear Mr. Davis: Mr. J. L. Hanigan has referred to me your letter of April 16, 1965, for reply."

Now, the next "Neither the Nassau Bowling Proprietors Association nor any other proprietors association or individual proprietor have any legitimate cause for alarm or concern over operation by Brunswick Corporation of a relatively few bowling establishments."

Mr. Davis, do you know how many bowling establishments BCOD operated after May 3, 1965?

A. Do I know now?

[1791]

Q. Yes.
A. Yes.

[1792]

Q. How many, sir?

A. Well, at one time or another they have taken over close to 260, I think, they have operated about 180 each year for the last seven years, between 180 and 200 centers.

Q. Would you share the characterization that that's a relatively few bowling establishments?

A. No, that's not a relatively few.

Q. Now, in the next paragraph you notice the sentence starting "In this posture"?

A. Yes.

Q. "The most prudent measure that could be taken in certain instances was for Brunswick to then assume the operation of establishments on a salvage basis in an attempt to bring it back to the point where it could stand on its own feet. During the course of salvage and at an appropriate point Brunswick will consider responsible offers to sell the establishments as a going business."

Do you have any knowledge as to whether or not Brunswick ever sold any of these establishments as a going business?

A. The only figure I have ever heard was the figure of two at one point, and I think the figure of five or six at some other point. I know of none myself that

[1793]

they have sold. I don't know of any particular ones.

Q. Now, Mr. Davis, do you have any knowledge of Brunswick building new bowling establishments?

A. Yes, I do, Mr. Hoffmann.

Q. What is that?

A. Well, the first knowledge I had directly from somebody in Brunswick was in early 1970, I placed a call to Brunswick's home office, and I asked for Mr. Thomas, and he wasn't in, so I asked to be connected with the person who was in charge of their new establishments.

I was, frankly, on a fishing expedition. And they connected me with a Mr. Zink, and I asked him if the new establishments in Chicago and Fort Wayne were open for bids. I thought this would be a good way to find out for myself.

And he said, yes, that the bids had gone out on one of them in what are called the Dodge Reports, and that the bids would be going out on the other one very shortly, within a week or two. This was in March of 1970.

Subsequently I had visited—visited one new center which Brunswick had built in California. That was last July.

Q. When you speak of bids going out, was it

[1794]

your understanding that what was meant by that is bids for the construction of the center?

A. Yes, when the plans are ready it is common practice to have the Dodge reports, which are used by the construction industry, to let contractors know that these contracts are being considered, and if they want to bid for any part of the contract it tells them where they can get the plans and how they can make a bid.

Q. Mr. Davis, do you have any knowledge of Brunswick acquiring centers which were not centers operated by Brunswick's debtors, that is to say, by bowling operators who were in debt to Brunswick for their equipment?

A. Yes, I do.

Q. Tell us about that, please.

A. I visited three Brunswick centers that were close together here in New Jersey about two years ago, Carteret —Brunswick's Carteret Lanes, that was a 32-lane center with Brunswick equipment, and Brunswick's Edison Lanes, which was a, I think a 40-lane center with Brunswick equipment, and Brunswick's Rahway Lanes, which was a 24-lane center, but which was completely equipped with AMF equipment, from stem to stern.

Q. You visited Rahway and you say it was——

A. AMF.

[1795]

Q. —AMF equipped center?

A. Completely. It had AMF pinspotters, it had AMF settees, it had AMF lockers, it had AMF ball returns, it even had, which surprised me very much, it had AMF pins in the machines.

It is very easy to distinguish the different brands of pins by their markings.

Q. How did you know you hadn't wandered into an AMF center; how did you know it was a Brunswick center?

A. In many ways. First of all, it had all of their signs. It had signs showing the different Brunswick divisions, Bowl-Your-Way-to-Europe, and behind the control desk there was a sign that said, "This is a Brunswick-operated center."

They had the Brunswick menu in the snack bar.

But that sign alone was enough to tell me.

And it is listed, incidentally, on the profit and loss statements which you received under subpoena or from the Court and which have been turned over to us for analysis, it is listed there as an operated center, and on that report

it shows that they pay machine rental to AMF, so those are leased machines according to their own profit and loss statement.

Q. Now, Mr. Davis, coming back to the Nassau Proprietors' complaint, did you in your capacity of

[1796]

president of this association, the Nassau Bowling Proprietors Association, have any occasion to meet with Brunswick's people in order to press complaint on behalf of the proprietors with them?

A. Yes, we did.

Q. When did that happen?

A. Well, after we got Mr. Rudo's reply, we felt it was very unsatisfactory. And one of the officers of our association who had always been quite friendly with the top people at Brunswick, he was a vice president at that time of our association, Mr. Goldberg, said he would set up a meeting with the proper people at Brunswick and we could straighten out the matters that we had complained of which related to Sunset Lanes in Long Island.

[1797]

Q. Did such a meeting, in fact, take place?

A. Yes. It took place I would—in order to pinpoint the date, I'd say it was obviously after Mr. Rudo's letter, which was May 3, 1965, and according to the best of my recollection it was before the national convention in San Juan, which would have been the end of June, so it was probably in early June 1965 we had a luncheon meeting set up at a restaurant called the Sky Club at Roosevelt Field in Nassau County.

At that meeting we had three Brunswick representatives, three representatives of the Nassau Bowling Pro-

prietors Association, and three representatives of the Suffolk Bowling Proprietors Association.

Q. What was the substance of the meeting?

A. Well, the—we had two main areas of complaint.

The Brunswick representatives were Mr. Jack Thomas, sitting over there (indicating), Mr. Bernie Rudo, who was, I believe, at that time in charge of the Brunswick operated centers, and Mr. Al Weiner, who was the regional manager for the Brunswick operating centers.

And the Suffolk proprietors led off first of all because they told——

Mr. McNeill: Excuse me. I will object to—he has identified already the three Brunswick

[1798]

representatives——

I will withdraw it.

The Court: Yes.

The Witness: Should I identify anybody else?

Q. You have identified the people from Brunswick.

A. Yes. I can identify the others if you want.

Q. Who else was there?

A. I was there, Mr. Goldberg, and Mr. Ullian from Nassau County, and the president of the Suffolk Association, Mr. Vic Barkas, their secretary, Mr. Schill, and a Brunswick proprietor, that is, a proprietor of a center that had Brunswick equipment, Mr. Manderola.

Those were all of the nine people who were there.

Q. Would you come back, please, to the substance of this meeting?

A. Well, the Suffolk proprietors told Mr. Thomas, who was really, I guess, the senior Brunswick representative there, or we considered that he was, about the various in-

ducements which Sunset Lanes had given to the Airborne Instrument leagues to get them to come across the street from Viking Lanes to bowl in Sunset Lanes.

There were the turkeys—I don't know if you want me to go into all of the things that were said

[1799]

yesterday. It was all of the things that they had calculated were the equivalent of, I think, 21 cents a game.

I must say I think Mr. Thomas was surprised when he heard this accusation and he——

Mr. McNeill: I would like to have the last part stricken, please. If he would say what Mr. Thomas said without stating Mr. Thomas' state of mind——

The Court: So ordered.

How do you know he was surprised?

Did he say so to you?

The Witness: Well, he turned his head——

Q. Pardon me. You are answering now how you know he was surprised?

A. I know he was surprised because he turned his head to Mr. Weiner, who was directly responsible, with a kind of a questioning look, you know, like, "Is this possible?"

He turned to him to answer. And that was an indication of surprise on my part.

And Mr. Weiner said, I remember it very clearly because I thought it was a really dumb answer to give in front of a bunch of proprietors, he said, "Well, we have to fill up the house."

[1800]

And then Mr. Thomas was really upset, if I can judge the expression on his face.

Q. How do you know he was upset?

A. Well, after the meeting, after the meeting he took me and Mr. Goldberg and perhaps one of the other guys aside and said that he was not aware that all these things had happened, and he said leave it to him, they wouldn't happen again in the future, that this situation would be corrected.

The other area of complaint which the Nassau proprietors had was one of concern that Brunswick, which at that time hadn't come into Nassau County, they did later, but they didn't have any centers in Nassau County, the fear that the Brunswick proprietors—when I say the Brunswick proprietors, the independent proprietors who had Brunswick equipment—had, which really, I believe, was their biggest fear, generally speaking they were doing fairly well, they were making some money, but many of them, perhaps most of them, were having difficulty in making their full payments to Brunswick.

And their concern, as they expressed it to Mr. Thomas, was that here they were, perhaps they were supposed to pay $60,000 a year in notes and they could only pay $40, and they were afraid that they

[1801]

might be foreclosed.

And they were also afraid that Brunswick would put equipment into centers that it took over, which they couldn't afford to put in, or would put in parts, pins and so forth, which Brunswick didn't have to pay for at retail, and then Brunswick would have this advantage——

And this was the question they put to Mr. Thomas. At that time some of them were concerned about Telescore, which many of them didn't have, they were concerned about, I think, the A-2 had come out at that time, yes, I think it had, they were concerned about that.

And Mr. Thomas answered them. He said that anything that went into a center that Brunswick operated they'd be charged the same price, and they'd be charged on the same terms as if Brunswick had sold that to an individual proprietor.

That was his answer to their question.

Q. Is that about the sum of it?

A. Yes, sir. That's basically what happened at that luncheon meeting.

Q. Now, then, Mr. Davis, how long have you now been with Treadway and its predecessor company, National Bowl-O-Mat?

[1802]

A. Since 1969.

Q. And in the course of those three and what, a quarter years, what have your duties been?

A. Well, my primary responsibility is the supervision of our bowling centers, I am responsible for every facet of their operation, and personnel, promotion, maintenance, particularly to watch the figures which we get on a daily and weekly and monthly basis, to see if there are any areas of management concern, and then to take action to correct any problems that come up.

[1803]

Q. And in the discharge of those duties have you become familiar with the various Treadway-operated bowling centers?

A. Oh, yes. In order to carry out my duties I have to visit the centers, and I visit them all as frequently as I can, and their competition.

Q. And you said "and their competition"?

A. Yes.

Q. Have you also visited their competition?

A. Yes.

Q. Now, sir, do you know the center called Belmont Lanes in Pueblo, California?

A. Yes.

Q. Have you had occasion to visit that center?

A. Yes. Each time I go to Pueblo I make it a point to go over and look at Belmont Lanes.

• • •

[1804]

Q. Now, in the Paramus area, the competitive area around Paramus Bowl, are you familiar with the Brunswick centers there?

A. Yes, I am.

Q. What are they?

A. Fair Lawn, Ten Pins on the Mall, which is the closest, Interstate in Ramsey, and Lodi Lanes.

Mr. Hoffmann: I'd like to have marked as Plaintiff's 64 for identification the BCO division, Brunswick Corporation, five-year plan, '66-'70.

(Exhibit P-64 marked for identification.)

Mr. Seeley: No objection.

Mr. Hoffmann: I offer it into evidence.

The Court: Into evidence, P-64.

(Exhibit P-64 received and marked in evidence.)

Q. Now, I'm going to read to you, Mr. Davis, from page 17 of the Brunswick BCOD five-year plan—by the way, do you know what this five-year plan is?

A. I have seen this before.

Q. Can you characterize it generally as to what it is?

A. Well, it is a confidential divisional plan, which is

prepared for top management and brought up to date each year by recasting it one year further ahead, so

[1805]

each year they move five years further ahead.

Q. It is for the BCOD division of Brunswick?

A. Yes.

Q. On page 17 there is the heading, "Plans for meeting objectives," and a subheading, Objective No. 3:

"Continue the bowling image building plan."

Item small Roman numeral iv, "The A-2 conversions in the better houses and certain geographical areas will aid in increasing revenue, enticing competition to try to convert also, and thus assist the bowling division sales."

Now, sir, from your inspection or examination of the premises of the competitors of the plaintiff can you tell us whether or not Belmont has A-2 equipment?

A. Belmont does have A-2 equipment.

Q. And coming into the Paramus area, do you know about Interstate?

A. Interstate does have A-2 equipment.

Q. How about Fair Lawn?

A. Fair Lawn also has A-2 equipment.

Q. Do you know of your own—can you think of any others?

A. I don't believe that Ten Pins has A-2's, and I don't believe that Lodi does. I may be wrong about Lodi, but I don't believe that I remember them there.

[1806]

I know Fair Lawn and Interstate.

Q. Do you know of your own knowledge how much it costs to put in an A-2 conversion?

A. I never bought them myself. I thought it was in the range of $1,800 to $2,000 a machine.

It is a rather big modification of machine, to change a good part of it, the whole back end——

Q. Can you roughly give us any number as to what the average number of lanes in a bowling center might be from your experience?

A. Well,——

Q. Say in the Paramus area.

A. I would say the average is 32 lanes, if you took an overall average.

Q. For the sake of arithmetic, suppose we were dealing with a 30-lane center?

A. Then you'd be talking about 55 or 60 thousand dollars.

Q. That's to convert to A-2; is that right?

A. Yes.

Q. Now, you have been the assistant to Mr. Lieblich, the president of the company; is that your testimony?

A. My original title was assistant to the president, and now I am vice president.

[1807]

Q. Are there other vice presidents?

A. Each division has a vice president.

Q. You are responsible——

A. For the bowling division.

Q. Does that reach to financial matters as well as other bowling matters?

A. Very much so, the heart of my responsibility, really.

Q. Now, there has been testimony in this case concerning the damage to the plaintiff centers, and there is an exhibit, Plaintiff's 53.

Did you have anything to do with the preparation of that exhibit?

A. Yes, I did.

Q. Did you work with Mr. Lieblich on it?

A. Yes, Mr. Lieblich and I spent quite a bit of time together to prepare this exhibit.

Q. I am going to take you, please, I will ask you please to look at this and tell us as best as you can the basis for the computations which were made; for example, in respect to Holiday, the first entry there, I note the number of years, that's the period of time for which we claim damages; is that right?

A. Yes.

Q. Then it starts at 12/10/65.

[1808]

Can you tell us, please——

Mr. Hoffmann: With your Honor's consent I will push away from here so that people can see it——

Q. (Continuing.)—can you tell us, please, how that base was arrived at?

A. The 12/10/65 was the date that Brunswick took over the operation of Dutchess Lanes. Dutchess Lanes closed in June 1969.

8/31/69 would be the end of our fiscal year. And of course by June the year's business is essentially ended, July and August are very slow months.

Q. And of course you didn't include after Dutchess closed——

A. No.

Q. Only for the period that Dutchess was in competition with Brunswick? The particular date, 8/31, corresponds with the end of the fiscal year of the Treadway bowling operation; is that right?

A. Yes.

Q. The additional annual bowling revenues referred to in the first column, how is that derived?

A. Well, in the case of Holiday and in the case of Paradise it was a lot easier to do at this time than it was three years ago.

[1809]

Q. Why is that?

A. Well, three years ago Star center was still open in Puerto Rico, and three years ago Dutchess had just closed, so we had to estimate what would happen.

As a matter of fact, I was very conservative last time in my estimation in Holiday. But now, when Mr. Lieblich and I prepared this chart, we looked at our actual increase in bowling revenues since 1969.

Q. When you say "actual increase," you mean——

A. What we are doing right now.

Q. What you are doing now?

A. As against what we did in 1969.

Q. And you mean also what you are doing right now since Dutchess closed down; is that right?

A. Yes.

[1810]

Q. And then how did you come by these figures?

A. Well, our——

Q. The first column, "Additional annual bowling revenues," 60 to $75,000?

A. How do we come to that figure?

Q. Yes.

A. Well, our actual increase in bowling from the 1969 year, which was the last year of our claim, to the current time, is approximately $110,000.

Now, we couldn't attribute it all to the closing of Dutchess. We felt that about two-thirds of that could be attributed to the closing of Dutchess, so we took two-thirds of that increase, which was 100 to 110,000, and we gave

the 60 to 75,000, which would be the portion we'd attribute of the actual increase, the portion we'd attribute to the closing of Dutchess.

Q. You say you made similar estimates three years without the experience?

A. Yes, I'm saying they were very conservative compared to what happened.

Q. What were those estimates?

A. In the case of Holiday, our estimates ranged maybe $30,000, 35.

And of course the events turned out to be quite

[1811]

different.

Q. Now, just briefly, there has been a lot of testimony about this, the next column after you made your computation of 60 to 75, "net income per thousand dollars of bowling revenues," what does that reflect?

A. That reflects the improvement in profit or net income that would result from an additional thousand dollars in bowling in that particular center, and it reflects the fact that there is other income besides the bowling which goes with the bowling, such as the food business, the bar business, the pro shop, shoe rental, vending income, miscellaneous income, that is part of the bowling operation.

And so that actually once all of our expenses are paid, once we have taken another thousand dollars of bowling in Holiday, our figures show that our profit goes up to $1,328.

Q. What does this show?

A. Multiplication of the estimated improvement of income by the improvement in profit that would go with it, so it shows per year from the closing of Dutchess we claim an improvement of profit of 79,680 to 99,600.

And then if that's multiplied by the number of years——

[1812]

Q. Three and three quarters?

A. Yes.

Q. This brings you to—this is just the product of the multiplication, is it not?

A. Yes. And I checked the arithmetic very carefully.

Q. Now, sir, you spoke of having experience in connection with Paradise. What was that experience?

A. Well, again, it is based on what is actually happening, it is a little more complicated than Holiday.

Q. Can we come at it this way: The dates, please, we claim for eight years, do we not?

A. Yes. Mr. Lieblich and I had some discussion about whether we should terminate our claim on 8/31/70, which is what we have done, or whether we should carry the claim forward to the day that Star actually closed, which was late October of 1972.

We had some discussion as to what to do.

Q. Why did you pick 8/31/70 as the termination of claim?

A. We felt, and I had good reason in coming to this conclusion—we felt that while the Star remained open after 8/31/70, it was going downhill fast,

[1813]

the guy that was running it was never there, they were not the tough competition that they had been up to that point —if I can use slang, they were dead but they didn't know enough to lie down. It was a dying thing.

Q. You make that statement on the basis of your own observation?

A. Of my own observations every time I visited the place.

I knew the man that was operating it the last two or three years. When I first went down there in 1969 and 1970, and I always visited Star, I'd meet Buss Stewart and talk to him, in fact, I had dinner with him, but after the first year or so that I went down there, from about that point on when I would go down to—when I'd go over to the Star and ask for Mr. Stewart, they'd say he is back in the States, he is back in Delaware, because he had moved down, he had kept his bowling centers in the States, he had two centers up here.

So he was never there, and the place was just deteriorating terribly.

[1814]

Q. So this terminal date here is a date which reflects the fact that Star had just deteriorated so you no longer thought it was real competition?

A. They were still doing business, they were still open, they still had leagues, they still had business, but really, they were not the competition they had been up to that time.

We thought it would be conservative to terminate our claim on that date.

Q. And the initial date, 9/1/62——

A. The initial date relates to the discrimination which we claim that the Brunswick Corporation gave to the Star while they were exacting every dollar from us in payment.

Q. Now coming to this first column in connection with Paradise, "Additional annual bowling revenue," Mr. Davis, what underlies this claim, 100,000 to 120,000?

A. Well, we began to pick up revenue from the Star in 1971 and 1972, but the Star closed the end of October, and on several occasions since then I have reviewed and analyzed our current business now that the Star is closed, I have been down there about four times since the Star

closed, and I have projected that this year, based on our actual improvement to date, we are going to do about $270,000 in bowling volume.

[1815]

In 1970, if my memory is correct, we did about $170,000.

So we have picked up from the 1970 figures to this year now that the Star has closed $100,000.

That's where the lower figure came from.

The reason we say 100 to 120, we didn't have the benefit of Star's being closed for the full year, Number 1.

And for the first couple of months after they closed, the leagues that were bowling at the Star were kind of up in the air, they didn't know what to do. And we really didn't start getting their leagues until January and February.

So that next year with the full complement of bowling that we received from Star we feel that we will do at least $120,000 over the 1970 year.

So this is based on our actual experience, Mr. Hoffmann.

Q. Do you know offhand from your memory what year Paradise became a profitable operation, that is to say, showed a net income rather than a loss?

A. That's another reason that led us to the 1970 figure. Up until 1970 Paradise had always lost money, but in 1971 and 1972 we finally turned the corner, and we finally were in the black.

[1816]

Mr. Hoffmann: With your Honor's permission, I'd just like to refer to Plaintiff's 21 in evidence, which shows all years at a loss from—from 8/31/61 right through 1970.

And then for 8/31/70 it shows a plus of 6,883, and then for 8/31/72 it shows an additional plus, to 23,344.

Q. Now, do you have any experience, Mr. Davis, in connection with this computation which reaches into the year 1973 for Paradise, that is to say, we are now in the month of April, do you have any knowledge of the Paradise earnings for the first three months or four months of 1972?

A. Oh, yes. You mean what our current year will show?

Q. Yes.

A. Yes, we have our six-months figures in, because our six-months period ends February 28—

Q. Pardon me. That's the six months?

A. The first half of the '72 year is in already. We have all of those figures, and our projection—

Q. I will then interrupt you again, forgive me.

When you say the first half is in, you are talking about a fiscal year, are you not?

The Court: '72-'73?

[1817]

The Witness: '72-'73.

Q. In other words, the fiscal year ends on August 31 according to your record keeping?

A. Yes.

Q. When you are talking about the first half you are talking about a six-months starting September 1?

A. September 1972 through February 1973.

Q. Sorry to interrupt you. Tell us again about your experience in this period.

A. Based on our experience for the first six months, our expenses and our income, we forecast a profit this year in the 1973 year, full year, of approximately $100,000.

Q. And that would correspond with the lower range of this—

A. No, I said we have achieved a—since 1972, since 1970 we have achieved an increase in bowling revenue of $100,000.

Q. And this is additional bowling revenue?

A. Yes.

[1818]

Q. Now, sir, is there any reason to suppose that that would be a constant, or is $100,000 the maximum which you think your experience would suggest that you would produce the next year?

A. No, because the Star Bowling center had about 400 league bowlers, and when the Star closed, two small leagues came over to us right away, IT&T lathes, and IBM league, they were just a small part of it.

The other leagues we didn't get until January and February.

So next year we will have a full year with those leagues, and incidentally, in Puerto Rico we go all year round, there is no winter and summer, so that that league revenue will alone, plus the fact that Star was still open in September and October, we feel it will do at least 120,000 next year or $20,000 more than this year.

Q. Now, you used this multiple of 1247. Again, how did you come by that, what does that represent?

A. That's based on the last eight years of actual experience for the other revenue that goes with the bowling to show the total effect on our net income of an increase of $1,000 in bowling.

Q. Then this is just the result of the multi-

[1819]

plication. And then you find the time span, isn't that so, in order to get your total amount of damages?

A. Yes.

Q. And was it your testimony that you felt that that time span could have been longer, but you wanted to give recognition to the fact that Star wasn't much of a competitor by the end of that period, 8/31/70; is that right?

A. That's right.

Q. Now, in connection with Paramus Bowl-O-Mat, what was the basis for your calculation of additional annual bowling revenue of 120,000 to 140,000?

A. Well, I had always felt that the effect of the closing of the Brunswick centers on our Paramus center would be in this range,

I believe, if my memory is correct, I believe at a prior hearing I testified to my feeling that it would be $125,000, and at that time I don't think Brunswick had Lodi.

This is basically the same feeling I had as before, that Ten Pins on the Mall, of course, is our closest competitor, and Fair Lawn—actually, it is a question of how much bowling a center can reasonably expect to be expected to do.

The four Brunswick centers on the market do over

[1820]

$900,000 in bowling. Obviously, we couldn't take all of that bowling business.

But if we got this additional amount of business which we could handle, daytime business, open bowling, weekend bowling, that we could easily handle this amount of business, and it would be available to us if Brunswick were not operating in these centers.

[1821]

Q. Do you know, Mr. Davis, what the lineage per lane has been at Bowl-O-Mat Paramus? I would like you to look, if you will, at Plaintiff's 13 in evidence.

A. Well, during which period do you want me to—

Q. Well, if you would be good enough to look at the figures for the period of time just before the upswing in bowling; would it be fair to say '68 to '71 would characterize that?

A. Yes. In fact, in '68, '69, '70 and '71, each year we did between 6,800 and 7,000 lines. We didn't quite hit 7,000 lines per lane in any one of those years. In '72 we had a little improvement.

Q. How many lanes are there at the Paramus Bowl-O-Mat?

A. 36.

Q. Can you tell us about what the capacity would be, that is to say, how many lines per lane there could be at these lanes in Paramus?

A. Well, yes, I think I could, Mr. Hoffmann. My own personal experience, running Freeport Bowl, we did close to 15,000 lines at one point. And I notice right here in Paramus' own figures that in 1961 we did almost 14,000 lines.

Q. So that there is no problem about accommodating the additional bowling?

[1822]

A. No, the additional business would bring us up to a little over 14,000 lines, if my memory is correct.

Q. Which is not far from where we were in 1961, is that right?

A. That is correct.

Q. That figure was 13,830 lines per lane. Now, you say you made some calculations three years ago that did not include Lodi, is that right?

A. That is correct, sir.

Q. Were they far from the present calculations?

A. I believe my testimony indicated $125,000 for an improvement in Paramus.

Q. That's in here, the bottom end of this exhibit.

A. Yes. Now I have to take a count of Lodi.

Q. Here is net income per thousand of bowling revenues—multiplied by $1,140, what does that represent?

A. That represents the eight-year experience in that particular center of the additional net incomes that would come with each additional $1,000 of bowling.

Q. And this is simply the result of the—

A. Multiplication.

Q. —multiplication, $136,800. Now, the figures here, from 3-26-65 to—

A. The first eight is the date Brunswick took over

[1823]

the operation of the AIBC centers, in '65, and they became Brunswick operations. And we claim it right up to the present date.

Q. They became, in effect, competitors at that time with Bowl-O-Mat Paramus, is that right?

A. Yes, sir.

Q. And you claim it up to date, eight years?

A. Through last Sunday.

Q. I beg your pardon?

A. Through last Sunday.

Q. Is the center open on Sundays?

A. Yes, sir.

Q. And that's your grand total (indicating)?

A. Yes.

Q. Now, Pueblo, the figure for additional annual bowling revenue, $90,000 to $100,000, how did you come by that figure?

A. Well, in Pueblo, Colorado, this is a very confined, clear market. You don't have to worry about the next

town. Everything is contained in that one community. And there has been a lot of testimony about the Pueblo market. I make a distinction in my mind, Mr. Hoffmann, between old fashioned centers and modern centers.

The modern centers are those that have been built since the pinsetter was in existence and in buildings

[1824]

that were built for that purpose.

And the old fashioned centers are centers that had pin boys years ago and then put in machines.

And in Pueblo, Belmont is, of course, a most modern center. And our center is a modern center. Payne's and Park are really what you would call old fashioned centers. And Bowlero is quite in between.

And once a person has bowled in a modern center they are not going to go back to a small old fashioned center. It is unlikely.

Looking at the business Belmont is doing, first of all, whatever daytime business they have, I felt we would get them, practically all of them, because we have the facilities, as they do for daytime business.

As far as leagues are concerned. I perhaps am a little more familiar than some of the previous witnesses. We are about 80 per cent booked on our early shift. And we only have one 20-team league, which is 10 per cent of our second shift. So we have a lot of room in Pueblo to accommodate evening leagues, which are only about—evening leagues are only probably about 40 per cent of the total business. But we could accommodate them.

There has been a lot of talk about early towns, late towns. Most of the cities in this country, the

[1825]

early shift is considered more desirable. But one of the things that we find, when there are enough bowlers available to fill a bowling center, then it is possible to get the early shift to start a little earlier.

We do that in many communities where our early leagues—where we have a late league, then the early league agrees to move up to, let's say, 6:00 o'clock, so that the late league can bowl at 8:30.

But taking the competitive situation into account, I feel that we would get at least—at least 90 to 100 thousand dollars out of the closing of Belmont.

There is another factor, too, that I took into consideration, Mr. Hoffmann. I don't know whether it is responsive to your question. But we have always had a problem in Pueblo because of the number of lanes in that small community, with the price of bowling. Our average price in Pueblo has been about 6 cents a game less than our national average.

And if Belmont were closed I think that we would be able to charge at least our average price for the rest of the country.

So I think that 90 to 100 is a conservative figure. Although the last time I think my figure was a little lower. But the last time I didn't have the experience that we since had in Holiday and in Paradise. We are

[1826]

basing this now on experience and what does happen when one of these centers closes.

Q. And then you applied $1,109?

A. Yes.

Q. And just very briefly, how did you come at that calculation?

A. That is based on Pueblo's own figures for the last eight years, for the additional income, net income, that we get for each additional $1,000 of bowling revenue.

Q. Then this is multiplication (indicating).

A. Yes.

Q. It brings it to this yearly figure of $99,810 to $110,900, is that right?

A. Yes.

Q. And that arithmetic, I take it, was carefully checked?

A. Checked and double checked.

Q. And then you multiply—

A. By 9⅝ years and we get the figure in the right-hand column.

Q. You have a final figure of $964,830 to $1,072,030, and then you have the summary. That simply adds them up, does it not?

A. Yes, we added all the lower numbers together,

[1827]

and all the higher numbers together, so it gives us a range from—if you take the lower numbers for all four centers, the total is $3,355,000. And if you take the higher range, it is $3,919,000.

[1828]

Q. Well, there are two ranges, one is lower, the top here; and one is higher, the bottom here.

Do you think that the plaintiff companies have really been damaged in the amounts reflected by the higher range?

A. Based on what has happened—you had asked me three years ago I might not have answered in quite the same way, but based on what has happened in Holiday, and what is happening right now in Paradise, I would have to say yes, I think the higher range applies.

But in the interest of conservatism, I suppose it is proper to give a range, you know, for those lower and higher figures.

• • •

Mr. Hoffmann: I finished my questioning, except for one little detail, which follows the introducing of an exhibit.

Would you please mark this as plaintiff's Exhibit 65 for identification.

[1829]

(Plaintiff's Exhibit 65 marked for identification.)

Q. Mr. Davis, I show you plaintiff's Exhibit 65 for identification and ask you to tell us what it is.

A. This is a chart entitled, "BCOD Centers Operating at a Net Loss," which I prepared.

Q. And what materials did you use in preparing it?

A. This is a summary of a previous exhibit, Mr. Hoffmann.

Q. Would it be—

A. I am not sure of the number.

Q. —47 in evidence?

(Shown to the witness.)

A. Yes, this is the exhibit of which this new sheet is a summary.

Mr. McNeill: What number is that, Mr. Hoffmann, please?

Mr. Hoffmann: 47.

Q. And what does this exhibit purport to show?

A. Well, this is a summary of the number of BCOD centers which operated at a net loss each year from 1965

through 1972. And that is shown as a percentage of the total number of centers that BCOD was operating.

[1830]

And it also shows, from the same source, the percentage of centers that would have been operated at a loss in the hands of independent proprietors.

Q. What is the underlying basis for this exhibit?

A. The records of the Brunswick Corporation, which were furnished to us.

Mr. Hoffmann: I offer it in evidence.

The Court: Any objection?

Mr. McNeill: I do. Just to clarify this last point from Mr. Davis——

Do you have Exhibit 47?

The Witness: I don't have it in my hand.

The Court: Give it to him.

(Exhibit handed to the witness.)

Mr. McNeill: Is it accurate that plaintiff's Exhibit 65 for identification was taken from both the top line that goes across Exhibit 47 and the bottom line from Exhibit 47?

The Witness: Yes.

Mr. McNeill: For each center.

The Witness: Yes.

Mr. McNeill: And isn't it correct that the top line for each of those centers does—as previously testified—come from Brunswick

[1831]

records?

The Witness: Yes, sir.

Mr. McNeill: But the bottom line as to each of those centers does not come from Brunswick records, isn't that correct?

The Witness: Well, in part, yes. The income does. The depreciation and interest does not come from Brunswick's records.

Mr. McNeill: In order to arrive at that second line on Exhibit 47, it was necessary to make use of plaintiff's Exhibit 1A, isn't that correct?

The Witness: That is correct, Mr. McNeill.

Mr. McNeill: Well, your Honor, to that extent, I wanted to clarify that this exhibit 65, while based on Exhibit 47, is only partially based on Brunswick's record, and the rest of it is based on another exhibit in this case. But it requires a hypothetical, and the assumptions, and so forth, which we previously objected to for Exhibit 1A.

Mr. Hoffmann: Your Honor, it is based upon a prior exhibit in evidence, as to which we have——

The Court: Into evidence.

[1832]

(Exhibit P-65 received in evidence.)

By Mr. Hoffmann:

Q. Now, Mr. Davis, just very quickly looking at P-65 in evidence, can you tell from that exhibit how many Brunswick centers were operated in the period of time '65 to '72, for each year?

A. Yes, this is Brunswick centers in the continental United States.

Q. Well, if I may, I will just read them off. You have 127 for '65, 173 for '66; 182, is that for '67?

A. Yes.

Q. 181 for '68; 172 for '69; 173 for '70; 175 for '71; and 179 for '72.

A. There is a typographical error here, Mr. Hoffmann, which is a very obvious one. Instead of typing 1969 at the top, the girl typed 1968 twice. That should be corrected.

Mr. Hoffmann: Mr. McNeill, would you have any objection to changing the second '68 to a '69?

Mr. McNeill: No.

Mr. Hoffmann: Thank you.

Mr. McNeill: Excuse me. Is it also clear that the number of BCOD center—operating

[1833]

figure which is on this exhibit, and which is inconsistent with other exhibits plaintiffs have offered in this case, indicates centers operated at any time during the year, rather than those in operation at the year end?

Mr. Hoffmann: I am not quite sure that I understood your statement. Inconsistent with other exhibits in the case?

Mr. McNeill: Yes. For example, your 49 and 50 talk about the number of centers operated by BCO. And just to take an example, the 1967 figure on Exhibit 50 is 162 centers, whereas the figure on this most recent exhibit says 182.

The Court: What are you saying, that some are only operated for part of the year, six months?

Mr. McNeill: I think that is the explanation. I shouldn't be testifying about it, but I thought it ought to be made clear.

The Court: Not that I am testifying, will you repeat it?

The Witness: When we received from Mr. Hoffmann the statement for each center, they showed a profit or a loss for each center during the year. It is possible that the center may

[1834]

not have been open at the end of the year. For example, they show in Brunswick's Orange Bowl, which is a center that I visited last July, one week before it opened in 1972, they show a profit of $75,000 in 1971.

In preparing this summary, which is Exhibit 47, we recorded the profit or loss for each center in each year that we were supplied a profit or loss statement for that center. So that could explain the discrepancy here and there of one or two places against what was actually open on December 31st of any particular year.

By Mr. Hoffmann:

Q. Mr. Davis, did you also not say that Canada had been subtracted from the list of centers?

A. Yes.

Q. Now, then, Mr. Davis, I simply ask you, what does this show, in terms of numbers of bowling centers, of BCOD operating at a loss from 1965 on; are there still centers of BCOD carried at a loss?

A. Even according to the way the BCOD takes its depreciation and no interest, there were still 25 centers in 1972 operating at a loss.

And throughout most of the period there were about half the centers, or more, operating at a loss.

• • •

[1835]

CROSS-EXAMINATION.

By Mr. McNeill:

Q. Mr. Davis, there has been some testimony about the bowling business in general being better from a proprietor's standpoint during the last couple of years—in fact, I think you used the word, "upswing"—is that accurate?

A. Yes.

[1836]

Q. And has Treadway, in its various operating companies, enjoyed the same upswing in bowling income over the last couple of years?

A. Generally we have, yes.

Q. And what about Treadway's profits on its bowling operations in the last couple of years, have they increased?

A. Yes, they have.

• • •

Q. Thinking of Treadway in its entire capacity as operating several businesses, including bowling, isn't it accurate that the 1971 net income after taxes was

[1837]

some $402,000, and in 1972 for your fiscal year it was $596,000, or an increase of 48 per cent?

A. You are talking about the whole company, including our food division and our motels.

Q. Yes, sir.

A. Yes, that's true.

Q. And were the bowling profits a significant part of the net income enjoyed by Treadway?

A. They weren't the Number 1 part, but there was an improvement in the bowling division.

Q. Is it also true, Mr. Davis, that the long-term debt that Treadway has had over the years, with respect to its bowling equipment, has essentially been paid off, and that the bowling equipment in the various Treadway centers, is now essentially free and clear?

A. I believe that's true, yes.

Q. And have the bowling operations of Treadway been able to generate a substantial amount of cash flow the last couple of years?

A. A substantial amount of cash flow?

Q. In the hundreds of thousands of dollars.

A. Yes, I would say it is several hundred thousand dollars.

Q. In making the various estimates with respect to the amount of additional profits or business that

[1838]

certain Treadway centers would have enjoyed if other centers in the area had closed down, you talked about your experience with respect to additional income in at least San Juan and in Wappingers Falls, did you not?

A. Yes, sir.

Q. And the experience figures you made use of were the 1972 profits enjoyed by Treadway, were they not?

A. Only in part. I also referred to the 1973, current year.

Q. I stand corrected. In other words, you made reference to the profits enjoyed after the general upswing in the bowling business?

A. The upswing didn't start in 1973. It began gradually in 1971 and '72, that is correct.

Q. You took advantage of the upswing at its uppermost limits to this date, didn't you?

• • •

A. It is a hard question to answer yes or no. Some

[1839]

of our centers have gone up and some have gone down. And in spite of the fact that the overall trend in the country may be up, we have centers that have gone up and centers that have gone down during this period.

Q. What about the four centers—Holiday, Paradise, Paramus and Pueblo Bowl-O-Mat—they have gone up, haven't they, in '72 and in '73?

A. Yes, I would say they have.

Q. Yes. And you made use of those calculations in your testimony a few minutes ago, the recent profits?

A. In the case of Holiday, I indicated that I attributed two-thirds of the increase to the closing of Dutchess.

Q. Yes, the increase after the upswing in bowling that you testified about.

A. Yes.

Q. Then you have spread that back over, have you not, over a period as long as 9⅔ years, in the case of Pueblo, isn't that accurate, according to Plaintiff's Exhibit 53?

A. That is correct, sir.

Q. I see.

Mr. Davis, with respect to Exhibit 53, this so-called damages to four of plaintiff's centers, first of all, wouldn't it be more accurate to say claimed damages

[1840]

to four of plaintiff's centers?

A. More accurate, Mr. McNeill?

Q. Yes, sir.

A. We feel very sincerely these are our damages. That's the heart of our case, I would assume.

Q. Those are being claimed in this litigation?

A. These are our claimed damages, yes.

Q. Would it be more accurate to add to the caption there, "Additional annual bowling revenues if centers in each of these market areas had been closed, the equipment pulled out, and no other operator had entered the market area"?

A. Well, in part, that would be true. That would be true in Holiday—that happened. In Paradise that happened.

It wouldn't be true in Paramus, because the four competing centers do a total of nine hundred and some thirty thousand dollars, so it wouldn't require all four of those to be closed down for us to pick up $120,000. It wouldn't be true in Paramus.

In Pueblo, I would say yes, it would have to be true, of course. If Belmont stayed open, we would get some, but we wouldn't get as much, obviously, as if it closed. The assumption is that these centers would have fallen of their own economic weight if Brunswick didn't

[1841]

prop them up.

So that could be added to the caption, Mr. McNeill, you are correct.

Q. That is the hypothesis here, these would be estimated additional annual bowling revenues if, indeed, Brunswick had closed, repossessed the equipment operated in those centers, pulled it out—

A. Except in Paramus.

Q. Well, let's go back to Paramus for a moment, sir. I understood your testimony to be that those were estimated additional bowling revenues that would accrue to

Paramus Bowl-O-Mat if Lodi, Ten Pins, Fair Lawn and Interstate had been closed and no one were operating there.

A. Well, yes. But I have to qualify it, Mr. McNeill, in all fairness. Ten Pins on the Mall, which is half a mile away, is presently doing $170,000 in bowling. It is very obvious to anybody that knows the market, if Ten Pins alone were to close, at least two-thirds of that would go a half mile down the road into our center.

So it is a combination. It is true, what you say, that we are talking about all four of these centers being operated by Brunswick, where they would have failed in the hands of individual proprietors. But I suppose you could qualify that and say if the centers

[1842]

were closed, yes. You could change that first line.

Q. If, indeed, someone else had been operating Belmont, for example, from August 1, 1963, thorugh last Sunday, April 1, 1973, then there wouldn't be any such estimate and the hypothesis for this exhibit would disappear, would it not?

A. It would be different if somebody else were operating Belmont. I don't suppose they would have A-2's, for example. It partly relates to the center being kept open by Brunswick and partly it relates to how Brunswick has operated the center. There are two parts to the question. It is a very complicated thing when you are trying to give simple answers. I am trying to do my best.

Q. I am just trying to find out whether it is accurate that the whole hypothesis of this exhibit is that such additional bowling revenue would come to the plaintiff centers if, indeed, during the dates indicated—if Brunswick-operated centers or, in the case of Paradise, Star Bowl—had

been closed down, the equipment pulled out, and no one had been there to replace it.

A. Well, our case, I suppose, is based on the fact that if Brunswick hadn't taken them over, that would have happened, yes. If Brunswick hadn't taken over

[1843]

Belmont, it would have closed in 1964.

Q. Well, that is the hypothesis.

A. Yes, I would say that's right.

Q. Now, your recent experience in San Juan, Puerto Rico, in operating Paradise Bowl-O-Mat, has resulted, you have testified, in a net profit of a hundred thousand dollars, I believe.

[1844]

A. That's our forecast for the current '72-'73 fiscal year, based on the first six months already in.

Q. And is your forecast for the succeeding fiscal year even greater profits than 100,000 for the year?

A. It will be, based on the additional league business, yes.

Q. And how many centers are competing with Paradise at this time in San Juan?

A. I believe there is only a small military installation, but there are no other commercial centers in San Juan. It is the last one left.

Q. Paradise Bowl-O-Mat is the only center operating in San Juan at the moment, commercially.

A. That is correct.

Q. Now, has it been your experience in the bowling business that when investors learn that the only centers—center—operating in a market are making profits in excess of $100,000 per year, that that might be a good market to open a bowling center?

A. Not sophisticated investors in 1973. If you want to go back to '60 and '61, that happened, it surely did.

But that wouldn't happen with a sophisticated investor in 1973, because he could figure out very

[1845]

easily, if we are doing X amount of business, $250,000, let's say, in an area like San Juan, that if he opened up a center, with the investment that would be involved, and divided that business with us, then we would both become losers again.

Q. Don't you ever develop any new business when you have a center——

A. We work very hard at it, but you should try in San Juan, Puerto Rico. It is not easy, sir; very difficult. It is a very difficult market to operate in.

Q. Does Treadway——

A. I might also add that a sophisticated investor could also, when he checked around, find out how many centers there were at one time in San Juan that have closed.

To the best of my knowledge, it is five. And we are the last of five or six centers.

Q. Mr. Davis, does Paradise Bowl-O-Mat, or Treadway, possess now the power to exclude any other operators from opening a center in San Juan?

A. No, sir; we do not.

Q. Even though you are the only operator in the city?

A. We don't have the power to preclude anybody

[1846]

from going in there, no.

Judgment would preclude it, but we don't have the power.

Q. Any investor who wanted to risk the money, wanted to buy used equipment, at the best possible prices,

could find a place to open a center, could indeed tomorrow, or today, open a center in San Juan.

Mr. Hoffmann: Is there a question?

Mr. McNeill: Yes, I put the question:

"Question: Isn't that accurate?

A. It would be a very large investment, but it's accurate.

Q. You testified a moment ago about a center in Rahway, New Jersey.

A. Yes, sir.

Q. And indicated that there were some signs indicating Brunswick management of that center?

A. Yes, sir.

Q. Are you familiar with the arrangements between Brunswick and the owner of that bowling center?

A. To a certain degree, yes.

Q. Do you know that Brunswick is managing that center for someone else?

A. That is not the understanding that I have of their arrangement. And if that is the case, why is

[1847]

it shown as an operating statistic, with income and expense, like any of the other Brunswick operated centers?

When we received the statistics from your company they indicated, in a separate group, some managed properties for which Brunswick was only receiving a management fee. They were not included in this analysis. This analysis is based on figures where you show income, and expense, and profit, or loss.

[1848]

Q. I ask you again, have you seen the papers reflecting the understanding?

A. I have not seen the documents relating to Rahway, except the operating profit and loss statement from Brunswick Corporation.

Mr. Hoffmann: May we see your Honor at side bar?

(Counsel approached side bar and the following proceedings were had without the hearing of the jury:)

Mr. Hoffmann: Do I have a right to expect that he will produce this contract or show that the situation is as his questions suggest?

The Court: Or at least testimony concerning the document.

Mr. McNeill: I don't know what purpose Mr. Hoffmann had in bringing this testimony forth from the witness, he walked into a center and saw that it had AMF equipment and signs that Brunswick operated it.

The Court: I don't know Mr. Hoffmann's purpose.

Mr. Hoffmann: To show in addition to building new centers that it operates it has even acquired or——

[1849]

The Court: AMF equipped centers?

Mr. Hoffmann: And operates those to make a profit. It shows both its feet are flatly placed in the bowling operating business.

Mr. McNeill: I will be glad to try to find a copy of whatever understanding there is. I just wanted to find out whether Mr. Davis——

The Court: I think in all fairness to these plaintiffs, when you ask a question like that, I am not concerned primarily with the production of documents, but perhaps some statement or record which can be furnished that it was Brunswick managed, if that is the proper bowling center term.

Mr. McNeill: Perhaps we can straighten this out during the luncheon recess.

Mr. Hoffmann: The way the record is now, it looks as if Mr. McNeill in the form of a question has testified differently from the witness. He has suggested——

The Court: Do you know whether it was Brunswick managed instead of Brunswick operated?

Mr. McNeill: He didn't know one way or the other.

The Court: See if you can unravel it.

[1850]

I will let it remain for the time being.

(Counsel return from side bar, and the following proceedings were had within the hearing and presence of the jury:)

Q. Mr. Davis, you testified that you and various associates operated several bowling centers and I believe they were in areas outside of the areas where plaintiffs are operating centers; isn't that accurate?

A. Yes.

Q. I have reference to Freeport out on Long Island.

A. Yes.

Q. There was a center up in Massachusetts called West Boyleston?

A. Yes.

Q. And another one in Massachusetts, in Framingham, and one in Queens, and one in Brooklyn, I believe.

Did any of those centers contain Brunswick equipment?

A. No.

Q. You are familiar, are you not, with plaintiff's Exhibit 1 in this case?

A. Yes.

Q. Showing the various payments and charges

[1851]

with respect to customers of Brunswick equipment. Does that exhibit have any application to any of the centers operated by you?

A. Yes, it does.

Q. How so?

Maybe we should have a copy of the exhibit in front of you?

Mr. Hoffmann: Would you like me to turn this back, Mr. McNeill?

Mr. McNeill: I beg your pardon?

A. Yes, this exhibit shows——

The Court: Wait a minute.

Q. You have plaintiff's exhibit 1 in your hands, do you not?

A. Yes.

[1852]

Q. And can you explain how that exhibit applies in the situation where you were operating Freeport Bowl with AMF equipment or West Boyleston, Massachusetts, while that was in operation, with AMF equipment?

A. Yes. This exhibit shows, and it separates the pinsetter and the lane, and it shows that a proprietor, an individual proprietor, has an expense for depreciation of $1,000 per lane per year, and an expense for interest of $320 per year, so that he has an expense for the purpose of his profit and loss statement of a little over $1300 a year.

And it also shows that he has a cash need of $2,000 per lane per year. As an AMF proprietor I had approximately those same expenses, a little higher on the profit—on the expense figure, my expenses were a little higher because the AMF machine rental was a little higher than the depreciation and interest had I bought a Brunswick pinsetter, and the cash need if I did—the cash need comes out on the pinsetter, $1168 a year, if I did 12,000 lines in Freeport, I testified I did 14 at one time, and I paid AMF 10 cents a line, I was paying more than $1,168, so that I was in a little worse position than a Brunswick proprietor.

Q. What were you paying AMF?

A. Machine rentals.

[1853]

Q. According to your schedule?

A. Yes.

Q. At all times for all of those centers?

A. We paid at all times when we could.

We had difficulty meeting those payments, and sometimes we had to go to AMF and say, "We can't pay you the 40,000, we can only pay you 30, and they'd take that $10,000 difference and they'd add it on to our debt with interest.

This was the problem in the early '60's. We were all struggling to meet those payments, and the AMF proprietors were struggling just as much as the Brunswick proprietors.

Q. The point is that your actual experience was considerably less than what you testified about a second ago.

A. No.

Mr. Hoffmann: Just to the contrary.

The Court: I will sustain that.

The Witness: Why was it less?

The Court: Don't you ask the questions.

The Witness: I'm sorry, sir.

The Court: You're not a lawyer, are you?

The Witness: No, sir.

Q. You testified that there were several instances

[1854]

for the centers you were operating where you went to AMF and obtained extension arrangements, your example was $40,000 was due, $30,000 was paid, and that $10,000 was put on for later payment; is that accurate?

A. We were able to obtain an extension, but it became—it was very hard to do, they were that much more lenient in extending notes than machine——

Q. With respect to the lanes, you were also able to obtain favorable extensions or moratoriums, making your actual cash payments per year somewhat less than you just testified about?

A. We paid them every penny we could, and to the extent we could, either they gave us mercy or eventually they closed us down, and eventually they closed us down in West Boyleston, because we couldn't make the payments.

Mr. McNeill: May I suggest a luncheon recess?

(Luncheon recess.)

* * *

[1869]

RE-DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. On the subject of turkeys, Mr. Davis, tell me, is the use of turkeys the competitive act of Brunswick which you and the other plaintiffs are complaining about?

A. No, sir.

Q. You don't care too much how many turkeys they give away at Christmas or Thanksgiving, do you? If they are just turkeys?

The Court: As long as he doesn't have to pay for them. Right?

A. Not really. I mean there is a difference in inducements, Mr. Hoffmann, if I may say so. There is a host-guest relationship between a bowling center and its leagues.

And the things that a proprietor may do with his leagues that he developed, and has had for many years, is a way of "thank you," and the things that a proprietor might do to induce a league to move from

[1870]

another center are really poles apart.

But turkeys have never been a big problem, as far as I know, with the Brunswick operating division.

Q. The turkeys are not significant to you as a competitive problem as, say, lower price?

A. Lower prices are much more important.

Q. Or trips to Europe, they are more important than turkeys, aren't they?

A. Yes, sir.

Q. That's the kind of practice you have been complaining about.

A. Prices, particularly, yes.

Q. Now, sir, Mr. McNeill asked you whether or not you had any reason to sue AMF, for example, in connection with West Boyleston Bowl. And I ask you the same question. Did AMF give you any reason to sue it under the antitrust laws?

A. They never operated centers in competition with me, if that is what you are referring to, Mr. Hoffmann.

No, I don't think they ever gave us any reason to sue them.

Q. You say they didn't operate centers in competition with you.

A. No, sir.

Q. Do you know whether they operated centers

[1871]

in competition with anyone else?

A. I know that they had a division briefly called Bowl-Op where they may have taken over a failing center, operated it for a few months, and then resold it to a proprietor.

I know they did that. I know of some centers that were resold, and during an interim period, for perhaps a year or less, AMF may have operated it through their Bowl-Op Division.

But they have not——

Q. Do you know of any situations in which AMF carried losing centers for a period of years, operated them?

A. I know of no instances.

Q. Do you know of any policy AMF may have had in respect to this matter?

A. Well, yes, their policy was that they would not go into the operating business in competition with independent proprietors.

• • •

[2064]

Mr. Hoffmann: But, if your Honor please, I would then ask only, among the plaintiffs, other than the four, only ask for money recovery for Indianapolis; as to the others—that is to say, as to Minneapolis, as to Skor, as to Muncie, as to Saginaw, as to Des Moines, indeed, as to Indianapolis, as well—we have them in the case, because we want injunctive relief for them later on.

I didn't argue injunctive relief the other day, because I thought it was premature to do that.

The Court: I agree.

Mr. Hoffmann: But in respect of their surviving in the complaint——

The Court: As to damages.

Mr. Hoffmann: As to damages, the only claim

[2065]

made for those individual centers is for Indianapolis, in relation to the $14,089 loan. But I hope they survive in the case for other purposes.

The Court: We will cross that bridge when we come to it.

• • •

[2066]

The Court: Defendant Brunswick has moved to strike Exhibits 1, 1A, 47, 48, 49, 50 and 65 on the grounds that the exhibits possess certain crucial inaccuracies which render them highly prejudicial and therefore inadmissible.

The Court has seriously considered all of the defendant's arguments as to why these exhibits are mis-

leading. Even if these arguments were true, however, this Court does not deem these exhibits to be "so extremely speculative and conjectural as to furnish no sound basis for the amounts allowed." *Emich Motors Corp. v. General Motors Corp.*, 181 F. 2d 70, 84 (Seventh Circuit 1950), *reversed on other grounds*, 340 U. S. 558 (1951).

It is almost inevitable in a case such as this and that the parties will argue over accounting methods and exhibit formulation. In the instant case, however, the Court has not been persuaded that the inaccuracies in the plaintiff's exhibits, assuming they exist, render these exhibits inadmissible. *Eastman Kodak Co. v. Southern Photo Materials Co.*, 273 U. S. 359 (1927); *Bigelow v. R. K. O. Pictures*, 327 U. S. 251 (1946). The motion to strike is, therefore, denied.

The Court has before it defendant Brunswick's

[2067]

motion for a directed verdict pursuant to Rule 50 of the Federal Rules of Civil Procedure as to all the claims made by the plaintiffs.

The standard by which this Court is to be guided in deciding a motion for a directed verdict pursuant to Rule 50 is that the motion can only be granted where "there can be but one reasonable conclusion as to the verdict." *Brady v. Southern Railway Co.*, 320 U. S. 47, 479-480 (1943).

The party against whom the motion is made is entitled to have all the evidence and testimony viewed in a light most favorable to him; he is entitled to all the reasonable inferences that could be drawn from the evidence. *Paletsky v. Farrell*, 54 F. R. D. 467 (Third Circuit 1972); *Gizzi v. Texaco, Inc.*, 437 F. 2d 308 (Third Circuit 1971).

Guided by these principles, the Court will consider the various arguments advanced by defendant's counsel as to why a verdict should now be directed in this case in its favor.

The first of these is that the plaintiffs have failed to set forth any proof that the defendant's acquisition with respect to Dutchess

[2068]

Lanes, Poughkeepsie–Wappingers Falls area; Fair Lawn and Interstate Lanes, Bergen County, New Jersey; and Belmont Lanes, Pueblo, Colorado, involved the necessary element of interstate commerce under Section 7 of the Clayton Act.

The defendant relies on *Lieberthal v. North Country Lanes*, 332 Fed. 2d 269 (Second Circuit 1964) and the cases cited therein or decided under Sections 1 and 2 of the Sherman Act. This case in this C[illegible]rt's opinion is distinguishable from the present one. In the present case the amount of interstate activity testified to is greater than that alleged in Lieberthal supra. In the present case there was testimony of purchase and sale of pinsetters, lanes, bowlers' supplies, and financial transactions, all in interstate commerce. Although the defendants conceded that the operation of bowling establishments directly and substantially affects interstate commerce, the Court concluded that the operations of bowling centers affected interstate commerce in *Bowl America, Inc. v. Fair Lanes, Inc.*, 299 F. Supp. 1080 (D. Ind. 1969).

Perhaps the activity itself–bowling might be of an intrastate character–and the centers

[2069]

themselves are localized. The language of Lieberthal supra on page 272 is pertinent.

"But the test of jurisdiction is not that the acts complained of affect a business engaged in interstate commerce, but that the conduct complained of affects the interstate commerce of such business" quoting *Page v. Work*, 290 Fed. 2d, 323 (1961) Ninth Circuit.

In view of the above the motion for a directed verdict in favor of the defendant and against the plaintiffs Holiday, Paramus and Pueblo on the third claim of the complaint on the grounds that interstate commerce has not been proven, is denied.

The second contention raised by the defendant is that the acquired companies were in a failing condition and that there has been no violation of Section 7 of the Clayton Act for that reason.

The "failing company" doctrine, however, is a very limited one. One asserting the doctrine successfully must establish not only that the company is irreversibly failing but that the acquisition in question was the sole alternative

[2070]

available. *United States v. Greater Buffalo Press, Inc.*, 402 U. S. 549 (1971).

The plaintiffs' proofs have not established that Brunswick's actions were the only alternative open to these companies. With the case in such a posture, then, the existence of the failing company defense is certainly a question over which reasonable men could differ. A verdict cannot, therefore, be directed on that basis.

The Court now moves to the question of monopolization and attempted monopolization. Perhaps it would be most expeditious to first determine what this case does not concern. It is not a case of a large corporation consuming its competitors on the same level of commerce. Percentage of the market, however infirm an indicator that might be, has a very limited application in this case. What the claims of the plaintiffs do involve is the charge that a powerful manufacturer has reached down vertically to attempt to control the retail market. The asserted source of the monopoly power then is not control of a large portion of the market, but control of the goods and services which the retail market requires.

[2071]

Thus, cases such as *United States v. United States Steel Corporation*, 251 U. S. 417 (1920) or *United States v. Grinnell Corp.*, 384 U. S. 563 (1966) have very little to do with the instant matter. The question involved herein is more akin to the situations in *Reynolds Metals Co. v. F. T. C.*, 309 Fed. 2d 223 (D. C. Circuit 1962) and *Sanitary Milk Producers v. Bergjans Farm Dairy, Inc.*, 368 Fed. 2d 679 (Eighth Circuit 1966) in that Brunswick, a manufacturer of the "raw materials" of the bowling business has entered the retail market.

In this Court's view this jury could reasonably conclude that Brunswick possesses monopoly power and that it employed this power, proximately damaging the plaintiffs. The existence of this question over which reasonable men can differ is sufficient to defeat the instant motion.

The foregoing discussion disposes of the defendant's arguments as to Paradise, Holiday, Paramus,

Pueblo and Fort Lauderdale and further disposes of the argument as to damages flowing from mere existence rather than predatory practices.

Furthermore, there has been a showing of

[2072]

possible advantages inuring to the centers acquired by Brunswick which the jury might conclude to be a manifestation of monopoly power.

The Court now moves its consideration to the claims of Saginaw, Muncie (Detroit), Skor, Minneapolis, and the parent company, Treadway, Inc.

The theory upon which the individual companies seek recovery is that they were forced to subsidize the "victimized" companies because of Brunswick's activities. The only damage they suffered which is not already directly claimed, however, was the sum of $41,000 in interest expense caused by Brunswick's refusal to extend credit at a continuing rate. Treadway, the parent company, is in the case to collect the damages, if any, for the now defunct Fort Lauderdale Lanes.

The computation of the aforementioned sum of $41,000, however, includes only the added expense with respect to two loans—one on the Indiana National Bank of Indianapolis incurred by Indianapolis Bowl-O-Mat in the amount of 175,000 creating an alleged added expense of $14,089, and the other on the Franklin National Bank incurred by the parent company, Bowl-O-Mat—now Treadway—in the

[2073]

amount of 975,000, creating an alleged added expense of $27,031.65.

It may be that the member bowling companies suffered a derivative loss as a result of the added expense to Treadway, but, other than the chart as to Indianapolis, there is no proof of that before this Court.

In this Court's opinion "there can be but one reasonable conclusion as to the verdict" respecting Saginaw, Muncie, Detroit Skor, Minneapolis, and Des Moines—and that is a verdict for the defendant. The Court therefore grants defendant's motion for a directed verdict with respect to, perhaps repetitiously, Saginaw, Muncie, Detroit Skor, Minneapolis and Des Moines, which leaves Indianapolis Bowl-O-Mat in addition to Treadway, Holiday, Paramus, Paradise and Pueblo.

I will pass upon the requested issues later on in this proceeding as requested by the attorney for defendant.

[2102]

• • •

JOHN A. BARRON, called as a witness on behalf of the defendant, having been duly sworn, testified as follows.

DIRECT EXAMINATION.

By Mr. Seeley:

Q. Where do you live, Mr. Barron?

A. Lake Forest, Illinois.

Q. What is your occupation?

A. I am an accountant with Brunswick Corporation, and assistant comptroller, director of operations control.

Q. Please state when you came to work for Brunswick Corporation, and identify each position which you have held with that corporation from that time until the present.

A. I joined Brunswick in 1952 as a senior accountant. In 1956 I was named chief accountant of the Brunswick Murray Automatic Pinsetter Corporation, which was a joint venture company between Brunswick and the Murray Corporation of America.

I served in that capacity until January 1962, when that corporation, which in the interim was fully acquired by Brunswick, was merged into Brunswick Corporation. In January 1962, I was appointed as as-

[2103]

sistant comptroller of the Bowling Division. In January 1963 I was appointed comptroller of the Installment Credit Division, which was a unit organized to handle the special long-term bowling equipment receivables.

Q. When you hear a plane passing overhead, you will have to raise your voice and try to talk above it, Mr. Barron.

A. All right.

I served as comptroller of the Installment Credit Division until December 1965, when I was appointed comptroller of the Bowling Division. And in 1967, when bowling and the bowling center operations divisions were merged, I continued as comptroller of the combined group.

And in August of 1972, I was appointed assistant comptroller of the corporation.

Q. Are you familiar with the accounting records and practices of the various aspects of Brunswick's bowling business including the manufacture and sale of automatic pinsetters and the operation of bowling centers by BCOD?

A. Yes.

Q. As comptroller of the Brunswick Division, or, rather, at the present time as director of opera-

[2104]

tions control of Brunswick, do you have under your control records which reflect Brunswick's sales of new pinsetters by years?

A. In the various capacities I served, I had those records under my direct control. And in my present capacity, as director of operations control, I have access to all books and records of the corporation.

Q. Do the records to which you have access, and which were under your control, show sales of used pinsetters?

A. Yes, sir.

Q. For what period?

A. For the years 1963 through 1972 we have complete detailed records. There were some sales prior to '63, but I don't have the details on those.

Q. Do you also have access to, and did you formerly have under your control, records of Brunswick which show the number of pinsetters which it has repossessed, by years?

A. Yes, sir.

Q. For what period do you have such records?

A. Here, again, on repossession I have detailed records from 1963 through 1972. We have some published reports of Brunswick, which we use with our banks, to show 1962 repossessions, and an estimate of

[2105]

1961.

Q. Keep your voice up so that the people in the jury don't have to strain to hear you, please. Was there a time when bowling equipment which Brunswick repossessed usually was resold immediately to another purchaser?

Mr. Hoffmann: I object to the question as leading, your Honor.

The Court: I will permit it. Answer the question.

A. Yes, sir; all of the equipment which was repossessed between the years 1956 and 1961 was generally resold almost immediately. There were people waiting to buy this equipment at some reduced prices.

In 1962 this was still pretty generally the case, but it started to slow down a little bit. We had some inventory of used equipment at the end of 1962. But we still had orders for all of those units.

However, in 1963, there was a drastic slowdown between the rate of repossessions and the rate of resales. We were not able to sell everything that we repossessed in 1963 and subsequent.

[2106]

Q. Do your records also show for each year beginning with 1963 the principal balances outstanding and unpaid on the installment purchase contract notes given to Brunswick by customers whose bowling equipment was repossessed in each of such years?

A. Yes, sir.

Q. Do your records also show for each of the years 1965 through 1972 the number of repossessed pinsetters which were turned over to BCOD for operation in bowling centers?

A. Yes, sir.

Q. Do your records also show for each such year the outstanding and unpaid principal balances on the installment purchase contract notes given by the customers whose bowling equipment after repossession was turned over to BCOD for operation?

The Witness: I didn't get the first part.

The Court: Repeat the question.

(Pending question read.)

A. Yes, there are records in the corporation for those amounts. Yes.

Q. Do you also have records which show, for each year from 1965 through 1972, the number of bowling centers taken over for operation by BCO, the number of such centers which were taken out of

[2107]

operation, sold or otherwise disposed of by BCO, and the number of centers operated by BCO at the end of such year?

A. Yes, sir.

• • •

Q. Does Brunswick also have records which show the same thing with respect to the number of lanes of bowling equipment turned over to BCO for operation in its centers?

A. Yes, sir.

Q. Do the records under your control, and to which you have access, show a profit or loss figure for each bowling center operated by BCO, and an average profit or loss figure for all of such centers, by years from 1965 through 1972?

[2108]

A. Yes. Well, we don't have an average for each center. That could be calculated readily. But we have detailed records for each center.

Q. I read it wrong. Aggregate was the word I meant to include in my question.

A. The total of all, yes.

• • •

Q. Do you also have under your control records which show a profit or loss figure for each bowling center operated by BCO and an aggregate profit or loss figure for all of such centers by years from 1965 through 1972?

A. Yes, sir.

Q. Does Brunswick maintain its accounts with respect to the operation of its BCO centers so that depreciation is charged to each center each year in determining the profit or loss of the center?

A. Yes, sir.

Q. And do the records under your control

[2109]

reflect the cash flow before charging depreciation of each BCO center, and all of them in the aggregate, for each of the years 1965 through 1972?

A. Yes, they do.

Q. Do the records under your control show the total unpaid balances owed to Brunswick on installment purchase contract notes arising from the sale of bowling equipment as of the last day of each year beginning in 1964?

A. Yes, sir.

Q. Now, do those figures, as of the end of each year, include any amount for bowling equipment notes on equipment which was repossessed during that year?

A. No, sir; at the time an account is repossessed the balances owed are removed from the receivables.

Q. And do the records under your control also show the number of installment purchase contract accounts represented by those balances?

A. Yes.

Q. Do the records under your control also show, with respect to such installment purchase contract accounts and balances, the number of accounts on which payments to

Brunswick were delinquent for more than 90 days, and the unpaid balances of such accounts at

[2110]

the end of each year?

A. Yes, they do.

Mr. Seeley: Will you mark this, please, Defendant's Exhibit 1 for identification.

(Exhibit D-1 marked for identification.)

Q. Mr. Barron, I hand you now a document which has been marked for identification Brunswick Exhibit 1. It bears the caption "Brunswick Corporation Summary of Pinsetter Sales, New, and Repossessions of Pinsetters in Units."

Have you examined that document before taking the stand and caused the figures which appear on it to be checked for accuracy against the Brunswick records which you have testified are under your control or to which you have access?

A. Yes, I have.

Q. And have you brought with you to the courtroom either the basic Brunswick records from which the figures are on Brunswick Exhibit 1 for identification were taken, or a summary of such basic records, which was prepared and kept by Brunswick in the usual course of business, together with any working papers which you used to derive from such records the figures which appear on the exhibit?

A. Yes, I have.

[2111]

Q. Brunswick Exhibit 1 for identification will be the first of several tabular exhibits about which I am going to ask you. You have examined each of them before taking the stand. To avoid repetitious questioning, I ask you if it

is true of each of such exhibits, as you have stated it is true of Brunswick Exhibit 1 for identification, that you have caused the figures on the exhibits to be checked for accuracy against Brunswick records, which you have testified are under your control or to which you have access, and that you have found that they correctly reflect the figures contained on such records?

A. Yes, sir.

Q. Is it also true of each such exhibit, as you have testified, that it is as to Brunswick Exhibit 1 for identification, that you have brought with you either the basic records, or summaries prepared and kept by Brunswick in the usual course of business, together with any working papers used to derive from such records the figures which appear on the respective exhibits?

A. Yes.

Q. Going back to Brunswick Exhibit 1 for identification, please tell the jury in a very general way what it purports to show.

[2112]

A. Well, this is a schedule that shows, for the years 1956 through 1972, the numbers of new pinsetters which were sold in each of those years.

Q. By Brunswick?

A. By Brunswick. And in another column it shows the numbers of pinsetters which were repossessed by Brunswick for the years 1961 through 1972.

Q. Why are there no figures for pinsetters repossessed before 1961?

A. As I mentioned earlier, there were some repossessions, but they were generally sold very quickly, and the company did not keep detailed records on such transactions. They were very few and very seldom.

Mr. Seeley: I offer D-1 in evidence.

Mr. Hoffmann: I would like the opportunity to conduct a voir dire.

The Court: I will permit it.

VOIR DIRE EXAMINATION.

* * *

By Mr. Hoffmann:

[2129]

Q. Now, come down, let your eye go down a page with me, if you will, Brunswick Exhibit No. 1, there is a marked drop off of sales, is there not, between 1964 and '65?

A. Yes.

Q. Goes down from 1441 to 659?

A. Yes.

Q. Again in 1966 down to 244?

A. Yes.

Q. Does these sales of pinsetters which you have on this list reflect all of Brunswick's sales of pinsetters?

A. All of Brunswick's sales of new pinsetters.

Q. Including sales to foreign countries?

A. No, sir, these are domestic sales only, United States.

Q. Now, sir, would we have any way of knowing from this chart whether or not these repossessions referred to in the repossession column were sold?

A. From this chart it is not indicated, no.

Q. And that's the chart that summarizes, is that your testimony, in answer to a question of Mr. Seeley's, "We have books and records on the resale of used equipment"?

[2130]

A. Yes.

Q. As to the sales of used equipment, do the records show sales of repossessed pinsetters to Japan, Europe, Canada and the like?

A. There are records that would indicate how many of those units were sold.

Q. Do the charts which you propose to offer here show that?

A. Which I propose to offer? All of the charts which have been prepared for this case relate only to domestic United States.

Q. So then if Brunswick repossessed a pinsetter machine and sold it in Japan, for all that we know here in the courtroom, that was the total loss; is that it?

A. As far as I know, there were no repossessed pinsetters sold in Japan.

Q. Do you know if there were any sold anywhere in the world besides the United States?

A. There were some sold in Canada, some in Latin America.

Q. Anywhere else?

A. Latin America.

Q. Is there any indication of that on your chart?

[2131]

A. No, sir, the charts that we prepared are strictly on the United States operation.

• • •

[2132]

Q. Now, if they are repossessed, what happens to the repossessed machines, do you know?

A. Some are manufactured and resold, some are operated by bowling center operations, some are scrapped.

Q. Is that your purpose to tell us anything about that when you put the new machines together with the repossessed old; is that right?

A. The purpose is to show the trend in the bowling business in the terms of sales, in the terms of repossession.

[2133]

The Court: You didn't attempt to disclose any resale of used——

The Witness: No, no attempt at all.

• • •

[2150]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Now, Mr. Barron, do you have D-1 before you?

[2151]

A. Yes, sir.

Q. Will you kindly state what it shows in more detail, taking first the sales of new pinsetters, year by year, and stating what they are, and then the repossessions, year by year?

A. Well, this shows that in 1956 we had sales of new automatic pinsetters of 1,890 units.

• • •

A. In 1957 the sales units increased to 7,041. In 1958 there was an increase again to 10,528 units. In

[2152]

1959 it was 12,876. In 1960 it continued to increase, 15,232. 1961 is 16,288. In 1962 there is a decline to 7,518

units. In 1963 a further decline to 2,978 units. They continued to decline, and I will read them off.

In 1964, 1,441; 1965, 659; 1966, 244; 1967, 295; 1968, 112; 1969, 118; 1970, 173; 1971, 72 units. In 1972 an increase to 1,048 units.

Repossessions?

Q. Repossessions, please.

A. Starting with 1961, there were 300 units repossessed; 1962, 1,462 units; 1963, 3,354 units; 1964, 4,592 units; 1965, 5,996 units; 1966, 3,658 units; 1967, 1,688; 1968, 716; 1969, 783; 1970, 290; 1971, 116; and finally 50 units in 1972.

• • •

[2164]

Q. Mr. Barron, I show you a sheet of paper marked for identification D-3 and captioned "Brunswick Corporation Used pinsetter sales, number of units by year."

[2165]

Was that prepared, sir, under your direction?

A. Yes.

Q. And from what records was it prepared?

A. This was prepared from records kept in the usual course of business in the accounting functions of Brunswick Corporation.

Mr. Seeley: I offer D-3 in evidence.

The Court: Show it to your adversary.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

• • •

Q. What is the purpose of this exhibit, Mr. Barron; what is it designed to show?

A. This is designed to show the number of units of used automatic pinsetters which were sold in each year starting with the year 1961 and proceeding to the year 1972.

• • •

[2166]

Q. And when you sold a used pinsetter, that developed some income, did it not, for the Brunswick company, the sale itself?

A. Yes.

Q. All right. Do these sales which are found on Brunswick's 3 reflect all of the used pinsetters sold in the particular years given, that is to say, in the years 1961 to 1972?

A. It is all of the pinsetters which were sold in the United States market in those areas.

Q. Why in the United States market, sir, if this is designed to reflect that was sold; what's the reason for taking out other countries in the world?

A. There was no reason to take out. The reason was to show what took place in the United States.

Q. I thought you said a moment ago it was to show the sales of used pinsetters and the income developed from such sales; isn't that right?

A. It was designed to show the number of units

[2167]

which were sold in the United States.

Q. May I ask you again, what is the reason for leaving out the sales in other places such as Latin America, Central America, Europe and Canada; why did you leave that out?

A. Because they are not a part of the United States.

Q. Is that the sole reason, because they are not part of the United States?

A. Yes.

• • •

[2170]

Mr. Seeley: I ask that this be marked, chart entitled "Brunswick Corporation, Pinsetters Repossessed and Used Pinsetters Sold, '61-'72," and I ask it be marked D-4 for identification.

(Exhibit D-4 marked for identification.)

Q. I show you Defendant's Exhibit 4 and I ask you if you know what that is.

A. Yes.

Q. Briefly, without going into explanation of it fully, where does the information on that come from?

[2171]

A. This comes from numeric information on Exhibit 3.

Q. Anything else? Where does the information on the top line come from?

A. The repossessions come from this schedule prepared in our installment credit department, in its regular course of business.

[2172]

Q. Is there any information on this chart that is the same information as shown on Exhibit D-1?

A. The repossession information is the same.

• • •

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2174]

Mr. Seeley: I will ask that there be marked for identification as D-5 a sheet of paper captioned,

"Brunswick Corporation Net Transfers of Pinsetters to BCO or operation 1965 to 1972."

(Exhibit D-5 marked for identification.)

[2175]

Q. Mr. Barron, I show you D-5 for identification.

Is that something which you have examined and checked previously?

A. Yes.

Q. And in a very general way, what is it?

A. This is a schedule which shows the net number of units transferred to pinsetter units—transferred to bowling center operations division for operations each year from 1965 through 1972.

Q. And were these figures derived from documents which you have in your possession which are records of Brunswick Corporation?

A. Yes.

Q. Have you checked them?

A. Yes.

• • •

[2203]

Mr. Seeley: Thank you. I now ask to have marked for identification as D-7 a sheet of paper entitled "Brunswick Corporation, Number of Bowling Centers BCO Commenced Operating and Number Disposed of by Sale, Lease or Deactivation by BCO, 1965-1972, in the United States."

(Exhibit D-7 marked for identification.)

By Mr. Seeley:

Q. I show you D-7 for identification, Mr. Barron. Is that an exhibit which you have checked against Brunswick records for accuracy?

A. Yes, it is.

[2204]

Q. And without mentioning any numbers or anything, what types of information does it purport to reflect?

A. Well, this shows the activity in the years 1965 through 1972. And going across the page we have four columns. The first column shows the number of centers that were commenced operating.

The second column is the number of centers that were disposed of.

The third column is the net transfers, which is the difference between the first two columns, the number started and the number disposed of.

And then the fourth column is the number operated at year end.

Mr. Seeley: Thank you. I offer in evidence D-7.

Mr. Hoffmann: A few questions, if I may, your Honor.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

• • •

[2206]

Q. Are we to conclude that during that year BCO operated 124 centers, and that those were transferred to BCO by Brunswick Corporation, or some other branch?

A. They commenced operating that number. That doesn't mean they operated them all year.

Q. You have, "operated year end"——

A. And they were still operating them at year end. They did not dispose of any in 1965.

Q. Disposed of zero, is that right?

A. Yes, sir.

Q. Who does that mean, that, "by" BCO?

A. That is correct.

Q. Now, we get 13 in the next year, disposed of.

A. Yes, sir.

Q. When you say disposed of, what is meant?

A. It is a center that BCO stopped operating.

Q. For any particular reason?

A. For any particular reason.

Q. Not necessarily by sale.

A. It could have been by sale.

Q. But not necessarily by sale?

A. No.

[2207]

Q. What are some of the other reasons?

A. They just plain decided that this was a center that they couldn't make money at, they should stop operating. Could have been a fire loss. Generally, it is the ones with the——

Q. What about lease, what does that mean?

A. This would be a center which Bowling Center Operations ceased operating and which would have been, in turn, leased to a third party, to an independent party.

Q. Do you have the underlying material for 1966 which supports the item: 13 disposed of?

A. Yes, sir.

Q. What is that?

A. What is it?

Q. Yes, what does it consist of?

A. It consists of a listing of individual houses showing the center identification number, the name of the center, and the number of lanes, and, of course, the number of houses, which would be one for each case.

Q. Does it show how it was disposed of?
A. No, sir; it does not.
Q. Do you have something that shows that?
A. No, sir; I don't.
Q. You didn't bring it here?

[2208]

A. No, sir; I didn't.
Q. Do you know if any one of those 13 centers was sold?
A. Yes.
Q. In 1966?
A. Yes, sir.
Q. Where are you looking now?
A. I am looking at this list of center names, that I am familiar with, one of them.
Q. Maybe you misunderstood me. You do have a record which indicates whether it was sold.
A. No, I have a recollection of activities of—one of the names on here was sold.
Q. What is that?
A. Cabrillo Lanes.
Q. How about the other 12, do you have any recollection as to them?
A. No, sir; I don't.
Q. You don't know one way or the other, whether or not they were sold?
A. No, sir.
Q. Look at the next year, 1967, 14 disposed of. Do you know whether or not any of those were sold?
A. I don't know.

[2209]

Q. Look at the next year, 1968. Any of those sold?
A. No, I don't know.

Q. When you say you don't know, does that mean that you really don't know whether it was sold, or that you do know it was not sold?
A. I do not know if it was sold.
Q. You don't know one way or the other?
A. That's right.
Q. Do you know one way or the other how many centers Brunswick sold in the period of time from 1965 to 1970?
A. Exact number, no, I don't know.
Q. Do you know approximately?
A. It is my recollection that to date——
Q. I'd like you to please answer my question. To 1970.
A. I don't know.
Q. If I put it to you that it was two, would that surprise you in any way?
A. I don't know.
Q. You don't know one way or the other whether it was more than two?
A. I don't know.
Q. And yet you say, "disposed of 13, 1966; 14,

[2210]

1967; 8, 1968; 8, 1969; 3, 1970; including one destroyed by fire.

Sir, is it your point in this chart to demonstrate to the jury and to the Court that these centers were disposed of by sale?
A. No.
Q. As far as you know, two is correct; isn't that right?
A. I don't know how many.
Q. You don't know one way or the other?
A. I don't know.

Q. Now, sir, when a center is deactivated, what happens?

A. The Sales Department is first of all notified that BCO—it could happen in several ways.

Number one would be that the operating people decide that they shouldn't operate the center any longer. They will notify the Sales Department who will, in turn, try to sell or lease or work out some arrangements for the equipment.

If they can't, then the equipment will be removed.

• • •

[2212]

A. It is all done by Brunswick.

Q. Number of bowling centers BCO commenced operating and number disposed of by sale, lease or deactivation by BCO.

Your thought is now that, "by BCO," only refers to deactivation; is that right?

A. It is the number disposed of, period. Some of them were disposed of strictly by BCO deactivating, some were disposed of by the selling division selling or leasing them to third parties.

Q. This disposed of column again, 54 disposed of, were all of those 54 in the hands of BCO at some point in time before they were disposed of?

A. Yes.

Q. Now, when it is leased, what happens? Who leases it?

A. The sales operation would lease to a proprietor.

[2213]

Q. And who is the lessor, the fellow who gives the lease?

A. The lessor is Brunswick Corporation.

Q. And when it is sold, who is the seller?

A. Brunswick Corporation.

Q. When it is deactivated, who deactivates it?

A. Brunswick Corporation.

• • •

[2218]

Q. Who in the company does know how this column, "Disposed of," was prepared from the underlying data—

A. I am as qualified as anybody to say how it was prepared. It was prepared in our Bowling Center Operations acounting group. They merely went down the list of centers that Brunswick stopped operating and they

[2219]

recorded them on a sheet of paper.

Q. Did you ask them to ascertain and search and find out from the records how many were disposed of by sale and how many separately disposed of by lease and how many separately disposed of by deactivation?

A. I didn't ask them.

Q. What did you do, ask them to lump them all together?

A. Actually I asked them to give me the number of centers that were deactivated by BCO, that BCO stopped operating.

Q. Do you know whether they examined all three situations, sale, lease and deactivation?

A. I don't know.

• • •

[2221]

Mr. McNeill: Just on the record, I'd like to tender to Mr. Hoffmann now a copy of what purports

to be the lease between Brunswick Corporation and Rahway Recreation Realty Company, a New Jersey corporation, and Rahway Recreation, Inc., a New Jersey corporation, in connection with that Rahway center that was mentioned in testimony the other day.

Mr. Hoffmann: I'd like to ask counsel whether it is a management contract as represented by counsel?

Mr. Seeley: Counsel is not on the witness stand, and I instruct him not to answer.

• • •

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2229]

Q. Mr. Barron, I show you the document marked for identification Exhibit D-9. Is that a document which you have checked for accuracy against Brunswick records?

A. Yes, it is.

[2230]

Q. And what were the records to which you referred to check that document?

A. Copies of the bowling center operations, domestic, profit and loss statements for the years ended 1965 through 1972.

Q. And without mentioning any numbers, what kind of information does Exhibit D-9 purport to show?

A. This shows the consolidated domestic cash flow from bowling center operations for each of the years 1965 through 1972.

Q. Would you briefly explain to the jury what is the difference between net profit or loss and cash flow in business?

A. Well, cash flow from operations of the business is basically the difference between the amounts taken and

the amount of cash expenditures. If you take in more than you spend in cash, you have a positive cash flow; if you take in less than you spend in cash, you have a negative cash flow.

Now, there are other items that affect profit, non-cash charges, and the biggest one of these is depreciation. And in most cases the difference between cash flow and profit is the amount of depreciation.

• • •

[2231]

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Barron, could you tell us, please, precisely what records were used in preparation for that exhibit?

The Court: D-9?

Mr. Hoffmann: D-9.

A. I reviewed copies of the bowling center operations division consolidated statements of income, domestic, for each year.

Q. Did you have occasion to look at the individual computations of Brunswick for each one of its operated centers during the years, that is to say, the profit and loss statement for each BCO center?

A. No, sir; I did not.

• • •

[2232]

Q. Mr. Barron, do you have a copy of P-32 in front of you?

A. No, I do not. I have seen a similar schedule and I——

Q. If I may, I will give you a copy.

(Handed to the witness.)

A. In my review of our profit and loss statements I tried to determine why there were some differences. And basically there were some items which your accountants, or whoever prepared your schedules, treated somewhat differently than we do at Brunswick. The basic numbers are pretty much in agreement, but you treated some of them somewhat differently.

Q. Do you know whether these differences are differences which are accounted for by accounting judgment, are they differences in facts or are they differences in the opinion or judgment of an accountant?

A. It was my observation that they were differences of judgment.

Q. In other words, the underlying facts for both exhibits you feel are the same, is that right?

[2233]

A. Yes.

Q. You feel you used the same facts in preparation——

A. I don't know what facts you used. But in my comparison of your final number with our statement, I could see where there could be a difference of opinion.

Q. Can you define that difference of opinion, can you tell us what it is that you think that our accountant did and what you did?

A. The biggest one was—what you might want to call start-up costs.

The Court: What is it?

The Witness: Some people would call it start-up cost.

The Court: I still don't know what it is.

The Witness: Start-up—when Brunswick started up its bowling centers there were——

The Court: Start-up costs, is that what you call it?

The Witness: Yes, sir.

We incurred certain expenses for field personnel who went out and evaluated centers, who negotiated leases; we had training programs to train managers. And these were included in the expenses of the bowling center operations division.

[2234]

They were provided for in 1965, when we realized that we had a receivables problem and that we were going to be operating some bowling centers.

Now, in the subsequent years these items were charged to BCO expense, but the cash was actually paid out in those years. And if you look at the year 1966 you show a positive cash flow for us, whereas on the statement of Exhibit D-9 there is a small negative cash flow. And the difference between those numbers is the amounts of—what are called repossession expenses on here. They were charged to the repossession reserve, the reason that they were labeled that here. But these were the expenses of the evaluators and trainers and that sort of thing.

[2235]

Q. Mr. Barron, I show you defendant's Exhibit D-1, which is Interstate Lanes.

Mr. Seeley: Now renumbered 1A.

Mr. Hoffmann: All right, 1A.

Q. Interstate Lanes.

Can you show me where the start-up costs appear on this?

A. It was not charged to the individual centers. It was an administrative department in the bowling center operating division's headquarters.

Q. Where are the records which relate to the start-up costs, administrative department in the bowling center operation—

A. They are in Skokie, in our headquarters.

(Counsel approached side bar and the following proceedings were had without the hearing of the jury:)

Mr. Hoffmann: There have been two trials of this case. We have subpoenaed and we have supposedly received the underlying records and P and L statements for each of the BCO operated centers.

This witness has just testified that he has put on this chart certain start-up charges, which appear in the administrative records of

[2236]

Brunswick and which we have never seen, which have not been brought forward and which are not reflected in the underlying, I believe, profit and loss statements received by us.

It seems to me at the very least we should have had this presented to us prior to this trial. It was never presented before.

I'm going to object to the receipt of this exhibit on the ground that the underlying materials were never shown to counsel.

The Court: Before you answer, I note with interest that on P-32 for the year 1966 plaintiff shows a cash flow, positive, of $986,000, approximately one million dollars.

On D-9, the defendant's exhibit contains a negative cash flow, $177,000.

The witness just testified that there was a minor difference. If minor is close to one million one hundred thousand——

Mr. Seeley: I didn't understand him to say "minor."

The Court: Minor to this Court would not be 986 plus 177. If anything, it is major.

Mr. Seeley: The difference is, I would say, in the plaintiff's favor, but in response

[2237]

to Mr. Hoffmann's argument on the plaintiff's exhibit our cash flow was increased by not charging to expense the start-up costs.

The Court: I know.

Mr. Seeley: And we felt that they were not properly—we are not entitled to credit for that, and we are not entitled to take them out.

So we left them in and got a figure of a lower cash flow.

It's as we said, it's a matter of applying different accounting principles or accounting judgment. We wanted to take those which we felt were the most conservative for us and we knew we came out worse doing it that way.

Mr. Hoffmann: I don't know what worse or better is.

The question is integrity of the exhibit and accuracy of the exhibit.

I don't know whether it is worse or better for me to have a plus or minus for a particular year. The fact of the matter is we have gone by records which have been in the normal way presented to us, and we have prepared our schedules based entirely on defendant's records.

We have no way, we have no way of meeting

[2238]

this in the dark——

Mr. Seeley: I'm sure you received the consolidated cash flow and profit statements.

Mr. Hoffmann: We received from you individual and consolidated statements which are in——

The Court: What is this?

Mr. Hoffmann: Defendant's 1, which I am told is 1A.

The Court: Referring to 1A, is there any item in there for the start-up costs?

Mr. Hoffmann: There is none, and the witness so testified.

Mr. McNeill: Your Honor and Mr. Hoffmann, I think perhaps I can clarify this.

I was greatly concerned with producing documents, and I know for a fact that for each of the calendar years a consolidated domestic profit and loss statement was produced to the plaintiff. Mr. Barron, I believe, has copies of them with him. And that Mr. Barron's exhibit has been prepared from those exhibits, which indicate start-up costs which he just testified were included——

Mr. Hoffmann: He just testified, if you

[2239]

will pardon my interrupting you, he doesn't have them here, that they are in Skokie, he didn't bring them forward, they are subsumed under the heading of administrative costs.

Mr. McNeill: No, sir. Your question was do you have the basic records showing start-up costs?

You did not ask him does he have the year-end consolidated profit and loss statement which reflects the total year start-up costs.

Mr. Hoffmann: I asked him from what records was this prepared.

The Court: I think in fairness to this jury and Court I will permit you to conduct a further voir dire with this witness before I rule on the admissibility of D-9.

This is the Court's P-32 and D-9 which was marked for identification, which the Court holds.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

The Court: At the Court's direction following the colloquy at side bar, I hereby direct you, Mr. Hoffmann, to pursue the interrogation of this witness.

[2240]

By Mr. Hoffmann:

Q. Mr. Barron, Brunswick Exhibit 9 for identification, that was prepared from what source material?

A. From the year ending statements of profit and loss for the domestic bowling center operations, for the consolidated domestic bowling centers.

[2241]

Q. And the start-up costs, where were they derived from?

A. They were derived from certain departments within the bowling centers operations division, and they are included in the statements of profit and loss.

Q. What statements of profit and loss, sir?

A. Ones for each year.

Q. And are they included in the individual bowling centers statements of profit and loss?

A. No.

Q. Such as D-1A which I showed you a few minutes ago?

A. No. The statements for the individual centers contained the revenues and the expenses for each that are directly attributable to that center.

There are certain departments, departments like accounting, like administration, like service, which provides services to all of the centers, and those items are not included in the individual bowling centers.

One of the departments was the real estate department, which went out and negotiated leases. They are a part of that repossession expense.

• • •

[2247]

The Court: This Court has done a little arithmetic itself. Plaintiff's Exhibit 32 shows $23,502,000 plus cash flow, total aggregate, right?

The Witness: Yes.

The Court: Last column, last figures?

The Witness: Yes.

The Court: I have done a little arithmetic with D-9 which has been marked for identification. That comes to $22,691,000, in round figures.

Tell this jury in plain ordinary terms or words why the difference?

Can you answer that, or no?

The Witness: Well, I have been trying to explain it to Mr. Hoffmann.

The Court: Never mind, Mr. Hoffmann. How

[2248]

about those six people sitting over there?

They are more important than Mr. Hoffmann.

The Witness: The difference basically is that in 1965 when Brunswick was starting the operation of bowling centers we provided certain reserves for expenses which we knew we were going to have to incur to acquire the centers. We knew we were going to have to train people and we knew we were going to have to have teams of evaluators to go out into the field. It was going to cost us certain amounts of money for travel, for salaries.

And we provided expenses in 1965 to cover those future expenses.

Now, as they were incurred in later years, instead of charging them to the operating profits and losses of the division, they were charged to these earlier reserves which had been created in 1965. That's the reason for the differences.

By Mr. Hoffmann:

Q. Do those earlier reserves appear in some way on this consolidated statement that you say is the underlying basis—

A. No, the reserves appeared on the corporate balance sheet.

• • •

[2257]

DIRECT EXAMINATION (Continued).

Mr. Seeley: Will you please mark for identification as D-11 a sheet of paper with the caption, "Brunswick Corporation, Bowling Center Operations, Domestic, number and percentage of

[2258]

centers with positive or negative cash flows from operations 1965-1972."

(Exhibit D-11 marked for identification.)

By Mr. Seeley:

Q. Mr. Barron, I show you the document just marked for identification D-11. Is that a tabulation which you have checked against Brunswick records?

A. Yes, sir.

Q. And what are the records, what is the source of the information?

A. The source of the information behind this exhibit is the individual profit and loss statements for each of the centers which Brunswick was operating as of the year end 1965 through 1972.

Mr. Seeley: I offer D-11 for identification in evidence, your Honor.

Mr. Hoffmann: May I have a short voir dire?

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Is there a different source of information for Brunswick 11 from the previous exhibit, Brunswick 10?

A. Well, Brunswick 11 is from the individual center operating results, and Exhibit D-9, that was from the consolidated statement of income.

[2259]

Q. And you come up with different numbers in the two exhibits, 9 and 11?

A. Yes, sir; that's possible.

Q. And different numbers for the positive cash flow of Brunswick operated centers, depending upon what source you use, different for 9 and 11?

A. Number 11 doesn't show the amount of cash flow. It just shows the numbers of centers.

Q. I'm sorry. It says in the caption the number and percentage of centers with positive or negative cash flow from operations?

A. Yes, sir.

Q. Well, when you compute the percentage, you compute it from a number, don't you?

A. Yes, sir.

Q. And the number involved in 11, that was derived, according to your testimony, from the individual P and L sheets for the different centers, isn't that right; isn't that what you just said?

A. That's what I said.

Q. Whereas 9 was derived from consolidated statements, isn't that what you said?

A. Yes, sir.

Q. And you concede that these are different, do you not?

[2260]

A. One forms the basis from the other.

Q. But the numbers are different, aren't they?

A. They are not different at all. They form the basis for—the numbers for the individual centers form the basis for what gets into the top consolidated P and L.

Q. In respect of the individual P and L which was submitted to the plaintiff, and that you looked at and saw just a moment ago——

Can I have one, please?

(Handed to counsel.)

Do the numbers from which the percentage is taken of the positive cash flow—do they consist of cumulating, that is, adding one of these to the other and getting your total positive cash flow?

A. The numbers for percentage that are shown on Exhibit 11 are percentages of 100. In the first year, if you will notice, there is a number of 124 total centers. That is 100 percent. There is always 100 percent each year.

And we went back and reviewed the statements of the individual centers to determine the number that had a positive cash flow, the number that had a negative cash flow.

Q. You didn't take those off the consolidated,

[2261]

you took those from the individual statements, isn't that right?

A. That's correct.

Q. Whereas 9 was taken from the consolidated.

A. That's right.

Q. And if there exists discrepancies between the two, it is for that reason, is that your testimony?

A. There are not going to be discrepancies. There are some things that get into one statement that don't get into another. Every statement is not prepared for the same purpose.

• • •

[2264]

Q. And does the cash flow correspond in both 9 and 11?

A. It can be reconciled.

Q. It doesn't correspond; is that your answer?

A. I am saying that there are some items in our centers where subsidiary corporations, such as liquor corporations, are not consolidated; they have an effect on the cash flow.

Q. So you have two cash flows, don't you, one for 9 and one for 11, isn't that right; isn't that what you just said?

A. They could be different.

Q. It isn't a question if they could; they are different, isn't that so? They can be reconciled, you said.

A. Yes.

• • •

[2268]

DIRECT EXAMINATION (Continued).

Mr. Seeley: I will ask to have marked for identification as DX-13 a sheet of paper bearing the caption, "Brunswick Corporation, Domestic Bowling, Notes receivables and 90 days delinquencies and 90 day delinquencies at year end 1964-1972."

(Exhibit D-13 marked for identification.)

Q. Mr. Barron, I show you a copy of the document just marked for identification, DX-13.

Do you know from what Brunswick records the figures on DX-13 were taken?

A. These were taken from summaries of accounts—or rather notes receivable, equipment notes receivable, maintained in the installment credit department, and these show the balances outstanding and the amounts delinquent as of each year end from 1964 through 1972.

• • •

[2282]

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. Will you tell us what the sources of information for the Brunswick Exhibit No. 16, what were the sources, where did it come from?

A. Well, the first source was a study made by the corporate comptroller's office in 1965.

Q. What did he study?

A. He studied the cost of installing lanes and pinsetters for each of the years 1957 through 1965, and he determined that certain averages——

Q. That was for the period 1957 through '65?

A. No, he determined an average for each one of those years.

Q. For each one of those years 1957 to 1965?

A. Yes.

Q. Has that been reflected here in some way?

A. It's reflected in the support papers behind this exhibit.

• • •

[2286]

Q. That summary is entitled "Bowling Center Operation Unit Costs dated for acquisition."

A. Yes.

Q. Then beneath, year of installation. Now, sir, do you know anything about what the source for that was?

A. The source for that was an analysis of the individual years' costs, which was conducted by the people in the corporate comptroller's office.

Q. Made by whom?

A. I don't know the name of the individual.

Q. Made from what?

A. Made from an examination of the books and records of the bowling division.

Q. How do you know that?

A. Because we were told that by the corporate comptroller's office.

Q. In 1965?

A. Yes, sir.

Q. Did you check back today to find out what the basis was, or do you remember this from——

A. I remember that from being active in the things that were going on at that time.

Q. You have some lines here which indicate: Manufacturing costs, lane, $1,630; pinsetter, $2,680,

[2287]

is that right?

A. $2,680 or $2,860?

Q. $2,860. A total of $4,490, is that correct?

A. Yes, sir.

• • •

[2289]

Q. But the lanes and pinsetters in Brunswick Exhibit 16 are lanes and pinsetters transferred to BCO centers in 1965; they weren't new, were they?

A. They weren't new in 1965.

Q. When they were transferred to BCO.

A. But they were new when they were installed. That is all this exhibit tries to show, is what the cost of the equipment was when it was new and when it was installed.

Q. That is the cost to some independent proprietor, say, who buys from Brunswick?

A. That is the cost to Brunswick Corporation.

Q. Well, sir, you have a total of $8,687. Do you know what the cost—or, rather, the price was for a pinsetter in 1965, an automatic pinsetter?

A. To a proprietor?

Q. To a proprietor buying from Brunswick.

A. I am not sure of the exact figure. It was in

[2290]

the $8,000 area.

Q. Wasn't it $8,160?

A. I am not sure.

Q. About that?

A. In that vicinity; yes, sir.

• • •

[2345]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Mr. Barron, are you familiar with plaintiff's Exhibits 1, 1A and 1B, which show the price and the terms of sale of a Brunswick automatic pinsetter, and a bowling

lane, sold under Brunswick's standard forms of separate contracts for those items of equipment?

A. Yes, sir, I have seen them.

Q. Did you observe that on plaintiff's Exhibit 1 there is a finance charge added to the costs of the lane amounting to 14 and a half percent of the balance of the price, after deducting the down payment; and that on the pinsetter contract there is a finance charge amounting to 23 percent of the unpaid balance of the contract?

A. Yes, sir.

[2346]

The Court: I think you said 14 and a half percent on the lane, didn't you? I think it's 14 and a quarter.

Mr. Hoffmann: 14 and a quarter.

Mr. Seeley: 14 and a quarter. Thank you for the correction.

Mr. Hoffmann: Yes. And it is an interest factor, not a finance charge.

Mr. Seeley: I will call it an interest factor.

Mr. Hoffmann: That is what it is on the paper.

Mr. Seeley: All right.

The Court: Why not give it to him? Are you going to use it, Mr. Seeley? Does he need it?

Mr. Seeley: I don't think he needs it.

The Court: All right. If he does, I will give it to Miss Costello and she can give it to him.

By Mr. Seeley:

Q. And can you tell us what that interest charge amounts to in terms of a simple interest rate per annum over the period of those two contracts?

A. In both cases that would yield approximately 6

[2347]

percent simple interest.

Q. Under each of those contracts the purchaser is to pay a certain amount to Brunswick in equal payments over a period of years, is it not?

A. That is correct.

Q. And assuming that the payments are made as they are scheduled, does each installment include a part of the interest and a part of the balance of the purchase price?

A. Yes, it does.

Q. Would you please explain how Brunswick would apportion each of those equal payments as between the interest cost and the unpaid principal balance?

A. Well, as each payment is received, the amount of interest which is earned on the preceding outstanding principal balance is calculated and is deducted from the total amount of that payment. And the balance that remains from that payment becomes the amount applied to principal and reduces the principal amount of the loan.

As the second payment comes in, the process is repeated. But the calculation of interest is based on a somewhat lower principal balance, and so the amount applied to interest on the second payment will be less than the first, and the amount applied to prin-

[2348]

cipal will be greater. So the principal balance continues to come down, and the amount of interest expense continues to—or the amount of interest applicable to those payments continues on down and the principal becomes greater.

Q. Using the contract terms, which are reflected on plaintiff's Exhibit 1, have you prepared schedules to show

year by year how much of the payments falling due on each of those contracts would be credited to earned interest and how much would go to reduce the principal balance each year, assuming that all of the payments were made on time?

A. Yes, I have.

Mr. Seeley: Please mark as D-17 a sheet of paper bearing the caption, "Brunswick Corporation Payment Schedule, Five Year Bowling Lane Contract, as as shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-17 marked for identification.)

Q. Mr. Barron, I show you D-17 for identification. Is that a calculation which you made, or caused to be made by people working under you?

A. Yes, it is.

Q. And have you verified its correctness by checking it?

[2349]

A. Yes, I have.

Q. Without mentioning amounts, will you state what it purports to show?

A. It shows that for a five-year bowling lane contract, with the amounts of deferred principal balance that were spelled out in plaintiff's Exhibit 1 and 1A, that if the payments were made on time this would show for the five years the total amounts paid each year, the amount of those payments that would be applied to principal and the amount that would be applied to interest, and the principal balance that would be outstanding at the end of each year.

Q. I observe on D-17 for identification that the amount applied to interest in the year two is greater than the amount applied in year one; could you explain that, please?

A. Yes. It was Brunswick's policy when they install equipment prior to the opening of a bowling season, that they would not schedule payments due until the first month after the start of the season. And October was the typical first payment month.

So, if a customer had his equipment installed in May or June, or something like that, the first payment would become due in November—or in October. I'm sorry. And there would be no interest charge from

[2350]

the time of his installation until the first payment.

So that in the first year you always start out with a clean break. Then in the second year you had a moratorium in the summer months, where you have four months with no payments. So that in the second year, you have a larger proportional payment applied to interest because of this four-month span with no payments.

Mr. Seeley: I offer D-17 for identification.

The Court: Into evidence, right?

Mr. Seeley: Yes, I am offering it.

[2351]

Mr. Hoffmann: One or two questions, please.

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. Mr. Seeley said that this chart was based on the assumption that the payments were made on time, is that correct?

A. Yes, sir.

Q. Well, what is this business about, for the second item, assuming that the payments were made on time; isn't that what it does?

A. In the second year?

Q. Yes.

A. No, sir. It assumes that in the second year, for example, you have a span for June, July, August and September for which the customer is not obliged to make a payment. That is, under the terms of the contract he pays eight months and he has four months off in the summer months, when he is not generally doing much business.

However, he still pays interest for that four months.

Q. You are assuming, then, in the items here, that the contract terms are followed, is that right?

A. Yes, sir.

[2352]

Q. There is no departure from the contract terms in these calculations.

A. No, sir.

Q. You are assuming that each payment made is made in accordance with the contract?

A. That is correct.

Q. Is that your testimony?

A. Yes, sir.

Mr. Hoffmann: I have no objection.

The Court: Into evidence, D-17.

(Exhibit D-17 received and marked in evidence.)

Mr. Seeley: I will ask to have marked D-18 for identification a sheet of paper bearing the legend "Brunswick Corporation, Payment Schedule, Eight

Year Automatic Pinsetter Contract, as Shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-18 marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. I will ask you, Mr. Barron, is D-18 for identification prepared in the same way as 17, except that 18 applies to the eight-year automatic pinsetter contract, whereas 17 applied to the five-year lane contract?

A. That is correct.

[2353]

Mr. Seeley: I offer D-18 into evidence.

Mr. Hoffmann: I just have one or two questions.

The Court: Yes.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. On 18—and I take it also on 17—you start with a principal balance, is that right?

A. Yes, sir.

Q. That's after a down payment is made, is that right?

A. That is correct.

Q. There is no indication of the total charge for the pinsetter on 18, is there?

A. No, sir; we started with the deferred balance after the down payment.

Q. But you have assumed, have you not, the correctness of Exhibit 1A when it puts down a pinsetter charge of $8100, haven't you?

A. Yes, sir.

Q. Then there would be a down payment of $500 against that which would leave a principal balance of $7600, is that correct?

A. That is correct.

Q. And you accept, then, the accuracy of

[2354]

$8100 as the pinsetter sales price, and $500 as the initial down payment from 1A, is that correct?

A. Yes, I do.

Q. And in respect of the previous exhibit, 17, the same is true about lanes, is it not, that you start with a principal balance of $3600, which reflects a sales price from 1A of $4500, is that right, plus a down payment of $900?

A. That's right.

Q. That isn't reflected on the face of your exhibit, but that is the system you use, is that correct?

A. Yes, sir.

Mr. Hoffmann: I have no objection.

The Court: Into evidence, 18.

(Exhibit D-18 received and marked in evidence.)

Mr. Seeley: I will ask that there be marked as D-19 for identification a sheet of paper bearing the caption "Brunswick Corporation, Combined Payment Schedule, Eight Year Automatic Pinsetter Contract and Five Year Bowling Lane Contract, as Shown on Plaintiff's Exhibits 1 and 1A."

(Exhibit D-19 marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

[2355]

Q. Mr. Barron, does D-19 for identification do anything other than combine on one piece of paper the figures from D-17 and D-18?

A. No, sir; that's exactly what it does. We added up all the columns on 17 and all the columns on 18 to get the combined total for those two contracts.

Mr. Seeley: I will offer in evidence D-19.

The Court: Excuse me. It is also a combination of 1 and 1A, right?

Mr. Seeley: Not a combination. The basic terms of the contract are taken from 1 and 1A.

The Court: Right. All right.

VOIR DIRE EXAMINATION.

By Mr. Hoffmann:

Q. But 1 and 1A also show down payments, do they not?

A. Yes, sir.

Q. And 19 doesn't show them.

A. No, sir.

Q. It starts with the principal balance of $7,200, is that right?

A. Yes, sir.

Q. It omits the fact that the purchaser has put out $1400 in down payments, is that correct?

A. This was to show the payments schedule remaining

[2356]

on the contract after his down payment.

Q. But he would have put out $1400, isn't that right?

A. Yes, sir.

Q. So that you would have had an initial cost to the consumer of the principal balance of $11,200, plus the $1400, is that right, or $12,600?

A. That would be the beginning contract amount, yes.

Mr. Hoffmann: No objection.

The Court: When you say 1400, you mean the 5 on the—

Mr. Hoffmann: 5 and 9.

The Court: —on the lane and 9 on the pinsetter.

Mr. Hoffmann: Yes.

The Court: All right. Just the opposite—

Mr. Hoffmann: The opposite, 5 on the pinsetter and 900 on the lane.

The Court: Right. Sorry.

(Exhibit D-19 received and marked in evidence.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Just to make it quite clear, you recall, do you not, that on Plaintiff's Exhibit 1 there appeared as the sales price—the price of a lane and pinsetter

[2357]

—which totalled $12,600, and then some other items which were described as furniture, and whatever else went into the center, which brought it up to an even $15,000?

A. Yes.

[2358]

Q. And is it not true that you have not attempted in Exhibits 17, 18 and 19 to figure out any interest on that extra $2400 worth of furniture, and so forth?

A. No, sir; Brunswick wasn't involved in the sales of those items and we didn't try to take them into consideration.

Q. Do you have 19 before you now, sir?

A. Yes, I do.

Q. Would you please go down Exhibit 19 year by year, starting with the principal balance at the beginning, and showing the manner in which it was reduced each year, the total payment, the principal, the interest and the remaining balance, and so on through the exhibit?

A. After this customer's down payment, would have been applied to his contract, he would have a beginning principal balance of $11,200.

The Court: Tell the jury whether it is on the pinsetter, the lane or both.

The Witness: This is on the combined pinsetter and lane contract.

The Court: All right.

A. (continuing) In the first year of those two contracts he would have required total payments of

[2359]

$1,990, of which $415.68 would be applied to interest and $1,573.32 to principal. This would bring the principal balance down, after the first year of payment, then to $9,626.68.

On the second year, his payment requirement is $1,992. That's a little bit different from the first year because of rounding. We throw the odd amounts in the

first year. In the second year he had a total payment requirement of $1,992 for the two contracts. The interest earned on those payments would have been $538.47. Principal application would be $1,453.53, which would bring the principal balance down to $8,173.15.

The third year, his total payment requirement again is $1,992. The interest portion would be $438.87 and principal would be $1,553.13. And at the end of the third year his principal balance would be $6,620.02.

In the fourth year again he would have a requirement of $1,992. The interest portion would be $339.29 and the principal would be $1,652.71. And the principal balance is now down to $4,967.31.

The fifth year, he again pays $1,992. The interest now is $239.71. You notice that keeps coming down each year. And the principal application was $1,752.29. Bringing the principal balance down to

[2360]

$3,215.02 at the end of the fifth year.

In the sixth year, his lanes are paid up. He finished paying for those in the five years. So in year number six he has a total payment requirement of only $1,168. And of that $152.71 would be applied to interest, $1,015.29 would be applied to principal. And the principal balance is now reduced to $2,199.73.

In the seventh year, he again has a $1,168 payment requirement, of which $96.33 is interest, and $1,071.67 is principal, reducing the balance on principal to $1,128.06.

In year number eight, he has another payment year of $1,168. The interest is $39.94, and $1,128.06 is principal. At the end of the eighth year he is paid up.

Mr. Seeley: Thank you.

The Court: Why not tell the jury the last line?

Mr. Seeley: We can.

The Witness: The total payments?

The Court: Yes.

Mr. Seeley: Yes.

The Witness: Well, for the eight years his total payments, other than the down payment—he would pay $13,461 on these two contracts, of

[2361]

which $11,200 would be beginning principal, and total interest would be $2,261.

The Court: All right.

By Mr. Seeley:

Q. Mr. Barron, do you have in your possession a profit and loss statement for the year 1966 of Paramus Bowl-O-Mat Corporation?

The Witness: Will you excuse me a minute?

Mr. Seeley: Yes, sir.

(Witness produces papers.)

A. Yes, I do.

[2362]

Q. And is that a profit and loss statement which I represented to you had been supplied to us by plaintiffs' counsel?

A. Yes, sir.

• • •

Q. On that profit and loss statement does there appear a figure for the total income of Paramus Bowl-O-Mat Corporation for its fiscal year 1966?

A. Total revenue?

Q. Total revenue, yes.

A. Yes, sir.

Q. And do you also find on there figures for the expense incurred for advertising and promotion by that corporation during the same year?

A. Yes, sir.

Q. Have you made a calculation to determine what percentage the expense for advertising and promotion was of the total income revenue?

A. Yes, sir; the total advertising and promotion expenditure in that year, at Paramus Bowl, was 5.6 per

[2363]

cent of total revenue. They spent $16,719 on total revenue of $300,866.

The Court: Give me the total revenue again.

The Witness: $300,866.

Q. Do you have also with you a profit and loss statement for the same year, 1966, of Fair Lawn—Brunswick's Fair Lawn Lanes?

A. Yes, sir.

Q. Would you get it out, please?

A. I have it.

Q. Is there a figure on that for the total revenue of that bowling establishment for the year?

A. Yes, sir.

The Court: What year?

Mr. Seeley: 1966.

Q. Is there also a figure on that profit and loss statement for the expenditures for advertising and promotion during 1966?

A. Yes, sir.

Q. Have you made a calculation as to the percentage which those expenditures for advertising and promotion were of the revenue as shown, total revenue as shown?

A. Yes, sir.

Q. What percentage did you find?

[2364]

A. I found that Fair Lawn's advertising and promotion expense was 2.0 per cent of total revenue.

The Court: What was the total revenue?

The Witness: The total revenue was $280,893. The total advertising and promotion expense was $5,507.

Q. Do you also have a profit and loss statement for Paramus Bowl-O-Mat Corporation for its fiscal year ended August 31, 1967?

A. Yes, sir.

Q. And what is the total revenue of the corporation in that year, as shown by that statement?

A. The total revenue for Paramus in 1967 was $287,006.

Q. And what is shown, if anything, as to the expenditures for advertising and promotion?

A. $10,628.

Q. And have you calculated what percentage that expenditure for advertising and promotion is of the revenue figure you stated?

A. Yes, sir; it was 3.7 per cent.

Q. Do you also have a profit and loss statement for 1967 for Brunswick's Fair Lawn Lanes?

A. Yes, sir.

[2365]

Q. What does it show as to the total revenue of that center for 1967?

A. Total revenue Fair Lawn Lanes, 1967, $266,344.

Q. And what is shown as the expenditure for advertising and promotion?

A. The total expenditure is $5,845.

Q. And have you calculated the percentage relationship of that expenditure for advertising and promotion to the revenue figure which you have given?

A. Yes. That was 2.2 percent.

Q. Do you have, sir, a profit and loss statement for the year ended August 31, 1966, for Pueblo Bowl-O-Mat Corporation?

A. August 1966?

Q. Yes.

A. That's the one we just had.

Q. Pueblo.

A. Oh, I'm sorry. Yes, I have one for August 1966 for Pueblo.

Q. Does that show the total revenue?

A. Yes.

Q. What's the figure?

A. Total figure, 1966, revenue at Pueblo $218,488.

Q. Does it show figures for advertising and promotion?

[2366]

A. Yes, it does.

Q. What is that figure?

A. The figure is $10,913.

Q. Have you calculated the percentage which the expenditures for advertising and promotion are of the revenue?

A. Yes. 5.0 percent.

Q. Do you have a profit and loss statement for Belmont Lanes for the year 1966?

A. Yes, I do.

Q. What does it show as to the total revenue of Belmont Lanes?

A. It shows total revenue of $167,457.

Q. What does it show as to the expenditures for advertising and promotion?

A. $4,162.

Q. What have you calculated as the percentage which the expenditures for advertising and promotion at Belmont was of this revenue in that year?

A. 2.5 percent.

Q. Do you also have a profit and loss statement for the year ended August 31, 1967, for Pueblo Bowl-O-Mat Corporation?

A. Yes, I do.

Q. What is shown as the total revenue of

[2367]

that center for that year?

A. For 1967, Pueblo Bowl-O-Mat had total revenue of $226,586.

Q. What is shown as the expenditure for advertising and promotion?

A. $8,396.

Q. What percentage are those expenditures of the total revenue?

A. 3.7 percent.

Q. Do you have a profit and loss statement from Brunswick's Belmont Lanes for 1967?

A. Yes, I do.

Q. What does it show as to the total revenue of Belmont Lanes in that year?

A. In 1967 Belmont Lanes had total revenue of $172,611.

Q. What is the expenditure for advertising and promotion?

A. Expenditure, $6,133.

Q. What percentage did you calculate that those expenditures are of the total revenue?

A. 3.6 percent.

• • •

[2371]

JOHN A. BARRON, resumed the stand and testified further as follows:

Mr. Seeley: Would you kindly mark for identification as Exhibit 16A a sheet of paper captioned "Brunswick Corporation, Original average manufacturing and installation cost to Brunswick of lanes and pinsetters transferred to BCO centers in 1965, in the United States."

(Exhibit D-16A marked for identification.)

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. I show you Exhibit D-16A for identification and I ask you if the figures which appear thereon opposite the words "manufacturing cost and installation cost" are the same figures to which you have testified previously as they appeared on the top portion of Exhibit D-16 for identification?

A. Yes.

Mr. Seeley: I offer in evidence Exhibit D-16A, your Honor.

The Court: Mr. Hoffmann?

Mr. Hoffmann: Can I have just a moment, if your Honor please? I just want to locate the prior testimony.

Just a few questions on voir dire, if I may.

[2372]

The Court: Proceed, please.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. The heading "Original average manufacturing and installation cost," Mr. Barron, how was the averaging of installation costs done?

A. It was done by the corporate comptroller's office, analyzing each year's activity for the installation of equipment, the total amount of installation costs and expenses were determined, divided by the number of units that were installed.

Q. And the years which were involved in this original average of manufacturing and installation costs, can you tell us what years they were?

A. Yes, sir. They were the years 1957 through 1965.

Q. Did you pick up any later years in making that average?

A. No, sir.

Q. Not 1966 and 1969?

A. No, sir.

Q. In respect to the manufacturing costs, is that a full—is that a full item, that is to say, does that fully reflect all of the manufacturing costs?

A. As best could be determined, yes, sir. I don't—yes, it was all of the manufacturing costs.

[2373]

Q. Those are the full manufacturing costs?

A. Yes.

Q. What do they include, do you know offhand?

A. They include all of the materials that entered into the product, all of the direct labor that was used in the construction and all of the manufacturing overheads.

Mr. Hoffmann: That's all. I have no objection.

The Court: Into evidence, D-16A.

(Exhibit D-16A received and marked in evidence.)

[2374]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. Mr. Barron, during the period that BCO has operated bowling establishments, has Brunswick had any cash needs for the payment of principal or interest on money which it owes?

A. Yes, sir.

Q. How much money did Brunswick owe on interest bearing obligations at December 31, 1964?

A. Could I refer to an annual report that we have?

Q. Yes.

A. At the end of 1964 we had total consolidated long term debt of $314,442,000.

Q. How much interest did Brunswick Corporation pay in the year 1965?

A. In the year 1965 we paid a total of approximately $18,520,000.

Q. Have cash needs, or the payment of such interest, or of any corporate interest, or the repayment of principal

on corporate loans, been reflected in the accounts which have been kept for the BCO Division?

Mr. Hoffmann: I object to the question as to form, your Honor. It seems to be three questions in one.

The Court: Do you understand it?

The Witness: Yes, sir.

[2375]

The Court: Overruled. I will permit him to answer it.

A. No, sir; it was Brunswick's policy to charge those expenses at the ...porate level and not at the operating level.

Q. What is the reason for that, if you know?

A. Well, two reasons, the main one being that the people who operate bowling centers have no control over the borrowing of funds and it's Brunswick's philosophy to administer those funds at the corporate level and that is where the interest charges are carried on the books.

Q. If Brunswick had wished to do so, could it have allocated portions of its indebtedness among various divisions or activities of the corporation?

A. Yes, it could.

Q. Could you now, for the purposes of this law suit, make an allocation to the BCO operation of a part of Brunswick's cash needs for the payment of principal and interest on its debts?

The Court: Repeat it, please.

(Question read.)

Mr. Hoffmann: I object to this question. The form of the question seems to me to include both the concept of interest and the concept of

[2376]

cash needs, and the initial part of the question asks whether he could do it now. I suppose the answer to that is—if the answer to that is yes, that he will do it, he will sit down in front of us and do it. If the question is, did he do it a few weeks ago, perhaps that question will be unobjectionable, if the rest of the form is correct.

The Court: To assist the jury, are you going to ask the witness to allocate?

Mr. Seeley: Yes, sir.

The Court: To what? What is going to follow? I will consider this a proffer of proof.

Mr. Seeley: He is going to describe the manner in which he has allocated to BCOD a portion of Brunswick's needs to pay interest and principal on its obligations from 1965 through 1972.

The Court: Answer the question.

The Witness: Yes.

The Court: What did you say, Mr. Seeley?

Mr. Seeley: 1972—I believe it is actually through 1975.

A. Yes, I could.

The Court: Answer it, please. Overruled.

[2377]

The Witness: Do you want me to describe it?

The Court: He asked you the question, could you allocate it? The answer is yes or no, or maybe.

A. Yes, I can.

The Court: What is your next question?

By Mr. Seeley:

Q. And have you done that, sir?

A. Yes, I have.

Mr. Seeley: I will ask to have marked for identification as Exhibit D-20 a sheet of paper headed, "Brunswick Corporation, Allocation to Bowling Center Operations, U. S., of a share of Brunswick's Cash Needs 1965-1975 for payments on loans obtained prior to 1965 related to domestic bowling equipment receivables."

(Exhibit D-20 marked for identification.)

Q. I show you the document marked Exhibit D-20 for identification and ask if you will, please, without referring to any amounts, or figures, describe the manner in which that document was prepared, the steps which were gone through in preparing it?

A. Well, the first thing we did to arrive at this allocation was to examine and determine the total amount

[2378]

of domestic bowling notes receivable which we had on our books at December 31, 1964. And secondly, we examined the books and records to identify the loans which we had with our banks, insurance companies and outside financial institutions, which were directly identified with the bowling receivables.

In the case of a large loan we had with C. I. T. Corporation, the notes receivable were specifically assigned to C. I. T. Corporation as security. In the case of the large loans with banks and insurance companies, these loans were not specifically assigned by the contracts, but we were prohibited from disposing of our notes receivable and also the people that were lending us the money specifically relied on those in their negotiations and meetings with us, as that was going to be the source for repayment of the loans.

So we identified those. And then we calculated a ratio of the bowling loans to the bowling receivables. After that, we did another survey of the establishments that were taken over for operation by BCO in 1965 and we determined the principal amount of indebtedness that was owed to Brunswick by the accounts that were in that group.

[2379]

A. (Continuing.) We then applied the ratio of total loans to total receivables, total bowling loans to total bowling receivables, to the principal amounts owed by customers that were repossessed and operated by BCO, and that ratio gave us the portion of the total loan that was allocable to the BCO operation.

Q. Now, you spoke of equipment transferred to BCO in 1965. Was that the equipment which had been—was that equipment which had been repossessed by Brunswick?

A. Yes, sir, it was.

Q. And at the time of repossession was the principal still due on receivables written off?

A. Yes.

Q. Now, after having arrived in the manner you have described at the sum representing indebtedness allocated

by you to BCOD, did you do anything further to break that down?

A. Yes. We calculated the total payments made by Brunswick on those loans, total amount of principal and total amount of interest paid from the years 1965 through 1962, and we divided that by 3,615 lanes, which was the number of lanes which we started to operate that year, and that gave us the total amount that could be allocated according to the actual payment schedule for

[2380]

the years 1965 through 1972, and then we projected the amounts which we know would be paid in 1973, '74 and '75, and that gave us the total payment per lane related to the 1965 loans.

Q. Do I understand that this is per lane per year?

A. For each of the years, yes, sir.

Q. And is there a breakdown on the exhibit as between principal and interest each year?

A. Yes, there is.

Q. In your opinion, sir, was that a fair and reasonable way of allocating to BCO centers a share of Brunswick's total cash needs for the repayment of loans and interest thereon related to pinsetters transferred to BCO in 1965?

A. I think it was very reasonable.

Q. Will you please explain the reason for that opinion?

A. Well, it could have been much higher. Brunswick's debt on equipment repossessed in 1965 was considerably higher than the debt that just related to BCO activity.

Brunswick still had to pay all of the loans that related to those accounts. We have shown in here only the amount allocable to the BCO houses, and the banks and the insurance companies, they looked to Brunswick to be

[2381]

paid, and I think that this was a very reasonable calculation.

Mr. Seeley: We offer in evidence Exhibit D-20 for identification.

Mr. Hoffmann: Your Honor, I'd like a voir dire, if I may.

The Court: All right.

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. When did the thought first occur to you, if it did, Mr. Barron, to try to allocate interest to the BCO centers?

A. In our discussions regarding this case, going back the last couple of years.

Q. You didn't have them for a prior hearing in this case, did you?

A. No, sir.

Q. Indeed, you had them only quite recently, haven't you, this graph—this exhibit?

A. Well, we started talking about it a couple—two, three years ago.

Q. And you started to make it up when; when was this piece of paper prepared, this proposed exhibit?

A. This final draft was prepared within the last week.

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[2394]

Q. Now, Mr. Barron, when you talk of a bowling center, you are not talking about the lanes and the pinsetters only, are you?

[2395]

A. No, sir.

Q. The building, parking lot, good will, leagues, bowlers who come in, a strategic location, perhaps, on the roadway, all these things, is it not, sir?

A. They are all part of a center.

Q. Of a bowling center. So that when you talk about correlating the machinery you repossessed from a prior owner to the center, you are not talking about a bowling center, are you, you are talking about what was owed by a prior owner, or operator?

A. That is correct.

Q. What he bought from you. He didn't buy good will from you, did he?

A. No, sir.

Q. He didn't buy a strategic location from you, a lease from you, perhaps a piece of real estate from you; those things he didn't buy, did he, from you, from Brunswick?

A. No, sir.

Q. By what accounting method, sir, are you permitted, in good conscience, to allocate to a bowling center, operated by Brunswick, the debts of a prior owner?

A. The loans that were related to those receivables

[2396]

had to be paid. The banks and the insurance companies looked to Brunswick Corporation to pay them. And what we have done with this schedule here is allocate to those centers a portion of the loans that Brunswick had. The banks and insurance companies didn't care where the money came from, just as long as it came from Brunswick.

Q. And Brunswick was prepared to pay them from some source other than BCO, isn't that right?

A. No, sir; they weren't prepared, the Brunswick obligation was there, and one of the ways that they hoped to stabilize the situation was to operate some of these centers.

Q. Did Brunswick have any large sums of money tied up in inventory at the Brunswick operated centers?

A. Inventory; no, sir.

Q. Did they have any large sums of money tied up in receivables, owing to the BCO operated centers?

A. Receivables owing to Brunswick prior to that repossession, yes.

Q. No, to the center that——

A. No, the receivables were written off prior to the acquisition.

Q. So by your own definition of interest, sir, what is there at a particular center which justifies

[2397]

the payment of interest—the charge of interest?

A. The fact that the interest expense was there and it was related to that receivable. Whether we wrote it off or not, the debt was still there, it had to be paid.

Q. You are saying, sir, that if somebody owed you a debt, and you later took over the center, Brunswick made a deal with the landlord, or purchased the property, or leased the property, made a settlement arrangement, made a deal with the prior debtor, the former owner—after all of that, there lingers in the air, somewhere over that BCO center, some debt that you now can allocate to that center; is that what you are saying to us?

A. There lingers a certain amount of debt that could be allocated to that center, if we chose to do it that way for administrative purposes.

Q. For administrative purposes. But you didn't choose to do it at any time except for the purpose of this case, isn't that so?

A. That is correct.

[2398]

Q. Why did you do it for the case and not for the realities of living, not for the normal bookkeeping or accounting purposes of Brunswick?

A. We did it that we could show to you that there were indeed a large amount of debt, a large amount of interest expense which was Brunswick's obligation.

Q. Now, sir, you say that the Brunswick Corporation had owing to it this debt, do you not?

A. It had debt owing to it from the customers, yes.

Q. As far as that is concerned, the Brunswick Corporation also had credits coming to it from customers, did it not?

A. Yes, sir.

Q. And those credits exceeded, even in the dark year of '65, the debts that were owing to Brunswick, isn't that also so?

A. The interest income exceeded the interest expense.

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[2400]

Q. You chose to use your own years, didn't you, for this chart, for this exhibit?

The Court: Refer to it, please.

Mr. Hoffmann: D-20, isn't it?

A. We started with December 31, 1964, with the amount of receivables that were due to Brunswick and the amount of loans that were due by Brunswick to its lenders.

Q. So that the year you started with is the same year to which you had reference here, is it not, with a million and a half on the plus side for Brunswick?

A. The subsequent year was that, yes.

Q. I ask you this, sir. Has there been any effort made to treat with these individual centers as a small fraction, whatever that fraction might be, of the total Brunswick operation in relation to its credits and its debts; for example, let us suppose that a bowling center yields $100,000 cash flow a year, and let us suppose 1965 the net sales in revenue to Brunswick were $314,876,000.

Did you try it out by taking 100,000 and dividing 100,000 into three hundred and fourteen million to see what fair percentage this BCO center might have of the revenues and of the obligations, too,

[2401]

of Brunswick?

A. Have I done that?

No, sir. It would serve no business purpose to do that.

Q. Why not?

A. Well, because in evaluating administration of a BCO center, we look at that center as a separate unit and we measure the management's achievements in that center by looking at it, and it alone.

Q. Thank you. So that is a separate unit in which there was, according to your testimony, no vast investment, is that right?

A. For book purposes, yes.

Q. There was no meaningful inventory, is that right?

A. No significant inventory.

Q. No significant inventory. There were no significant receivables, is that right?

A. No, sir.

Q. Tell us again, please, Mr. Barron, how it is that you looked at this as a separate entity, this BCO center;

as some creature which has no significant inventory, no significant receivables, no plant investment; what is it, some abstraction that somebody wrote in chalk on the wall somewhere?

[2402]

A. No, sir; this is an entity that was taken over and operated by Brunswick in an effort to stabilize the business conditions and straighten out its receivables portfolio, and to recover some of the funds that we would not otherwise have been able to get.

Q. In point of fact, the BCO centers yield a great deal of money today, do they not?

A. They are producing cash flow; yes, sir; but they still have a long way to go to produce the amounts that were owed to us at the time of repossession.

Q. Do you know how much they produced each year; do you know how much they produced in '72, for example?

A. I believe last year was—Excuse me a minute.

(Producing papers.)

$8,472,000.

Q. They gave the company $8,472,000 last year, is that what you are saying?

A. That's what they produced in cash flow, yes.

Q. How much did Brunswick pay out for them this last year, if you know?

A. For them?

Q. Yes.

A. Well, with the allocation of charges as we have calculated them here, they would have paid out $18,801,000.

[2403]

Q. Do you mean they paid out in that year, 1972, eighteen million—

A. I'm sorry, that was the total—yes, that's right. We would have paid—

Q. Will you say it again, please?

A. No. $1,880,000.

Q. And that is based upon—they bring in more than eight, and you put out more than one, is that right, and that is based upon a state of facts that never existed, isn't that right?

A. That's for the year 1972.

• • •

Q. Is there anything, Mr. Barron, that has happened over these years, 1965 to 1972, which is reflected in bookkeeping, that Brunswick gave to banks, in support of applications for loans, or tax statements that Brunswick gave to the State govern-

[2404]

ments and the Federal Government, which reflect this interest charge as applied to individual bowling—operated centers, BCO centers?

A. It was Brunswick's policy, for administrative purposes, not to so charge interest to the individual centers.

Q. But notwithstanding the Brunswick policy, you now are willing to make certain assumptions, for purposes of this law suit; is that your testimony?

A. Not assumptions, allocations.

Q. Allocations of what, sir?

A. Allocations of loan payments and interest applicable to those loans.

Q. Now, getting back just once more, when you said allocations of loan payments, you are not talking about

loan payments made by these particular BCO centers, are you?

A. I am talking about loan payments by Brunswick Corporation.

* * *

[2423]

DIRECT EXAMINATION (Continued).

By Mr. Seeley:

Q. At the end of the year 1964, did Brunswick own certain dollars worth of receivables representing payments to be made, payments owed to Brunswick by purchasers of bowling equipment?

A. Yes, sir, there were very large amounts due.

Q. Now, then, at the same time did Brunswick Corporation owe a certain amount of money on loans which it had obtained in connection with the creation of those bowling receivables?

A. Yes, sir, we did.

Q. And did you in the calculations which you made establish a percentage ratio between the amount of Brunswick's bowling receivables and the amount of its indebtedness related to those receivables on December 31, 1964?

A. Yes.

Q. And during the year 1965, was a certain dollar amount of those receivables lost to Brunswick because of repossession of the equipment on which it was owed?

A. Yes.

Q. And thereupon, did Brunswick have instead of the lost receivables a certain amount of bowling equipment?

[2424]

A. Yes.

Q. Which went into BCO houses?

A. That's right.

Q. Now, then, for the purpose of allocating to that equipment in BCO houses a portion of Brunswick's total indebtedness, have you applied to the receivables lost through repossession the same percentage ratio as existed between the total amount of receivables and the total amount of indebtedness Brunswick owed?

A. No.

[2425]

The Court: I would like to clarify something in my own mind.

Mr. Seeley: Yes, sir.

The Court: Mr. Barron, let's assume that Mr. Jones—the hypothetical person used by Mr. Hoffmann—he wants to establish a bowling center in Peoria, Illinois. The entire set-up is going cost, let's say, half a million dollars.

Assume further that Mr. Jones has $150,000. He has to borrow $350,000 from Brunswick. Do you follow me so far?

The Witness: Yes, sir.

The Court: Assume further that two years later the center fails. Right, sir?

The Witness: Yes, sir.

The Court: Let me go back a step. Brunswick had to go out and borrow $350,000 to loan it to Mr. Jones, right?

The Witness: Yes.

The Court: They had to pay interest on that obligation to the institution from whom those monies were borrowed, right, sir?

The Witness: That is correct.

The Court: Are you telling this jury that you consider that in the allocation or preparation

[2426]

of these figures in D-20?

The Witness: Yes, sir.

The Court: That's how you broke it down.

The Witness: That is exactly what we are trying to tell them.

The Court: All right.

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[2495]

By Mr. Hoffmann:

Q. Please take a look at it, sir. Just read this as 1A rather than 1.

The Court: It says 1 on it?

Mr. Hoffmann: It says 1 on it.

Q. Can you tell me what that is?

A. This is the individual profit and loss statement for Interstate Lanes for December 1972.

Q. And what is Interstate Lanes?

A. Interstate Lanes is a bowling center which Brunswick operates in Ramsey, New Jersey.

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[2498]

Q. Does that purport to be a full profit and loss statement for Interstate Lanes?

A. Yes, sir.

Q. Thank you. By the way, could you find for us, please, some interest item on that exhibit?

A. There is no interest item on that exhibit, because for administrative purposes Brunswick does not charge interest to its bowling centers.

Q. Can you tell us what the principal is from that exhibit?

A. The principal—

Q. Yes, the principal for this center, Interstate Lanes of Ramsey, New Jersey.

A. For administrative purposes, Brunswick did not

[2499]

allocate loans to the individual centers; if we wanted to, we could.

Q. Principal or interest, is that right?

A. We did not, sir, no. If we wanted to, we could have; but we chose, for administrative reasons, not to.

Q. So with all the records that you have, and which you summarize, which are put into the memory tape of the computer, and which come out here in printed form, there is no principal or interest factor; is that what you are saying to us?

A. For an individual center, no, there is not.

Q. And if we have all of your printouts for the Brunswick operated centers, and we examined them, and we add them up, and we make our own calculations from them, we will have no interest or principal factor appearing, isn't that right; this is all we are using?

A. If that is all you had to use, that's right, you wouldn't find them.

[2500]

The Court: Excuse me, Mr. Hoffmann. What do you mean by for administrative purposes?

The Witness: Well, sir, Brunswick's management philosophy is to try to measure people and have them report against their activity for the things for which they are responsible.

In the case of bowling center operations, for example, the people that run bowling centers, they control the revenues, they control the cost, they—and they could be measured by how well they perform against the budget. The people who run bowling centers have nothing to do with borrowing money.

The borrowing of money for the repayment of debt, interest rates to be charged, those are all the responsibility of the corporate treasury department.

So for administrative purposes when Brunswick looks at the results of operations of the bowling center activity, they don't consider interest in that judgment. They set a budget for revenues and budget for expenses, and they measure the bowling management as to how well they operate with that budget or how well they control costs, how much they improved their activity over the

[2501]

prior year, and in the case of interest they—the people who run bowling centers have no control at all over interest, and for that reason——

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[2515]

Q. Now, sir, do you know whether or not during much of the period described by this exhibit there were a sizeable number of Brunswick operated centers operating at a loss?

A. Well, we showed an exhibit the other day, the number of centers that we had with positive and negative

cash flows, and there were substantial centers in the early years, and that gradually changed to where we had very few cash loss centers.

In 1972——

Q. How many in 1969, if you know?

A. 1969 there were 38 centers with a negative cash flow and 127 centers with positive cash flow.

Q. How about 1966?

A. 74 centers with negative cash flow and 87 with positive cash flow.

Q. How about 1965?

A. 89 centers with negative cash flow and 35 with positive cash flow.

Q. Now, in 1965, 6 and 7, were those years in which you find that the negative centers, negative cash flow centers, exceeded the positive, those three?

A. 1966 and forward, the positive exceeded the negative. In 1965 was the only year that negative cash flow centers exceeded positive.

[2516]

Q. According to your calculations?

A. Yes.

Q. Now, sir, did you extract in 1965 any money from any of these centers to supply Brunswick needs for the purpose of paying off principal and interest?

A. The ones with the negative cash flow, no.

• • •

[2518]

The Court: Referring to Exhibit number——

Mr. Hoffmann: No. 1A, Plaintiffs' 1A, page 1.

Q. Do you see that item?

A. Yes.

Q. You have accepted that item, have you not, in your charts as representing the cost of a pinsetter?

A. To a customer.

Q. Yes.

A. Yes.

[2519]

Q. Now, then, normally the down payment would be $500?

A. Yes.

Q. Which would leave a balance of $7600; is that right?

A. Yes.

Q. When Brunswick sold a pinsetter to an independent proprietor it received the $500 and had owing to it $7600. What did it do with that debt; did this debt become something that Brunswick sat back and just worried about?

A. No, sir. It was recorded on the balance sheet and was followed for collection.

Q. Was it in fact handed over to CIT?

A. To the extent that we had borrowings from CIT, yes, we would have directly assigned that as security. It wasn't handed over to them.

Q. So you kissed it goodbye to CIT for all practical purposes, didn't you?

A. We did not.

Q. What was the extent, what was the extent that CIT took over the debt?

A. The—part of our agreement with CIT Corporation was that we would borrow on a certain percentage of the pinsetter receivables——

[2520]

Q. Don't you remember what that percentage was?

A. Yes, I do.

Q. What was it?

A. It was an effective 56 per cent.

Q. Not 60?

A. No.

Q. And you say an effective 56 per cent, what do you mean by the word "effective"?

A. We were required to assign and borrow from CIT on a minimum of 80 per cent of the receivables which we generated, and we could borrow anywhere from 70 to 100 per cent, so the 70 per cent of 80 became effective 56.

Q. Could you do in your head approximately what that 56 represented in dollars in the example we are using of 8100 less the 500, which is $7600 against which 56 per cent, is that approximately, although not by any means exactly, about $4500?

A. Well, it would have been 56 per cent of $7600.

Q. Yes.

A. So it would be somewhere in that——

Q. Somewhere in that range. Tell us, please, what happened to that money, that four thousand or somewhere in the magnitude of four thousand, what happened to that money; how was it used by Brunswick?

[2521]

A. It was used by Brunswick to manufacture equipment, to build buildings for the manufacture of equipment, to finance inventories.

Q. Of all kinds?

A. It was used for their general purposes.

Q. It wasn't limited to the bowling center operations, was it?

A. Use of the money, no.

Q. Used by Brunswick for any purpose it pleased; is that so?

A. Yes.

Q. In Japan it's necessary, or Canada, regretfully that might be——

A. I didn't hear all of your question.

Q. In Japan, if necessary, or in Canada, regretful as that might be?

A. It could have been used for that, yes, but all of the funds were to be used to pay back that loan to CIT were going to come from those receivables.

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[2523]

Q. Is it your testimony, Mr. Barron, that the 1966 loan that involved some 18 banks and insurance companies, is it your testimony that that money was

[2524]

only to be used in BCOD operations?

A. The 1966 rewrite?

Q. Yes.

A. That was to be used by Brunswick in its general course of business.

Q. For any general course of Brunswick; isn't that so?

A. Yes.

Q. Why do you balk at golf clubs; why couldn't it be used for golf clubs?

A. It could have been used for golf clubs. I don't balk at it at all.

Q. Oh, it could? And it could have been used also for a bowling center 20 miles outside of Tokyo, could it not?

A. Could have been.

Q. So far as you know, it was; isn't that so?

A. I don't know specifically what each and every dollar was used for.

Q. But there were dollars spent 20 miles out or somewhere near Tokyo, weren't there, by Brunswick?

A. Yes, and there were dollars generated in Tokyo, too. Perhaps dollars were generated in operations over there.

Q. There were dollars generated by BCOD centers,

[2525]

werent' there?

A. There were.

Q. What is this item of principal on 22 for identification; that's part of this cash need, right?

A. Yes.

Q. To pay back principal?

A. Yes.

Q. To whom, to these banks?

A. Yes.

Q. For expenditures in Tokyo?

A. It was to pay back the loans for which we were obligated.

Q. By "we" you mean Brunswick generally?

A. Brunswick Corporation.

Q. And also according to Exhibit 20 it was to pay back interest; isn't that right, because you have a column for principal and a column for interest and you say the total constitutes cash need for Exhibit 23 for identification; is that right?

A. Right.

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[2528]

EXAMINATION ON VOIR DIRE.

By Mr. Hoffmann:

Q. Now, the Brunswick operated centers, Mr. Barron, did they have any cash need to pay interest to anybody?

A. Brunswick Corporation had cash needs.

Q. Please answer my question, sir.

Does Brunswick operated centers have any cash need to pay anybody?

A. Brunswick operated centers is a part of Brunswick

[2529]

Corporation. It is not a separate entity.

Q. Did the Brunswick operated centers have separate existence in the sense that it had a local manager?

A. Yes, sir.

Q. Did it have a separate existence in the sense that it had a plant, that is to say, a bowling center facility, separate from the central headquarters of Brunswick?

A. Yes, that's right.

Q. Did it have a separate existence in the sense that it had its own league bowling—leagues bowling?

A. Each center had certain numbers of leagues, yes.

Q. Did it have a separate existence in the sense that it had its own physical location on the side of the road somewhere?

A. Each had a location.

Q. Did it have a separate existence in the sense that bowlers came to bowl at these different premises?

A. Each had bowlers.

Q. Did it have a separate existence in the sense that it had facilities different from other facilities for the use by bowlers, that is to say,

[2530]

such things as snack bars, liquor bars and the like?

A. They all had the snack bars and liquor bars, that sort of thing.

Q. Did it have a separate existence in the sense that Brunswick kept separate records for each of these bowling centers?

A. Brunswick kept separate records for each center.

Q. And did Brunswick in keeping these separate records for each of the centers keep track of the expenses of these centers, did those records show expense items?

A. Yes, they did.

Q. And did the expense items which these separate centers had include in among the records anything for the payment of interest, sir?

A. No, sir, I have explained to you that we did not allocate interest.

Q. Can we take the "no, sir——"

Mr. McNeill: I object to the question, of Mr. Hoffmann interrupting this witness.

Mr. Hoffmann: I submit the question calls for yes or no.

The Court: I will permit him to answer, and if I don't think it is responsive I can strike it.

[2531]

(Record read.)

The Court: "No, sir, period."

Overruled. Proceed.

Q. Now, sir, was there any depreciation allocated on the profit and loss statements of the various BCOD centers?

A. Yes, there was.

Q. Could you show us that on D-1 for identification?

A. At the top of page 4.

[2532]

Q. There are entries here, are there not, for depreciation; is that leasehold?

A. That's right.

Q. And the leasehold is what, the lease between the Brunswick center and the landlord; is that what you are talking about?

A. We are talking about leasehold improvements, which would be shelving, counters, that sort of thing, which we would put in and which would remain the property of the landlord after we moved out.

Q. Then you have depreciation of the automatic pinsetters for Interstate Lanes, is that right?

A. Yes, sir.

Q. What does that reflect?

A. This reflects the amount of depreciation charged to this center for the month of December, and on the other side for the 12 months.

Q. Is that based on a calculation as to how long it would take for the pinsetter to wear out?

A. It is based on an estimated useful life, yes.

Q. Do you know, in connection with the center, how long that useful life is supposed to be?

A. We use 10 years.

Q. Then you have deprecation of bowling equipment, is that right?

[2533]

A. Yes, sir.

Q. Once again, what does that refer to, as distinct from the pinsetter?

A. The bowling equipment would be the lanes, and the settees, and the other components—everything that makes up a bowling lane other than a pinsetter.

Q. Do you have a basis for depreciating that in terms of expected life?

A. We use ten years.

Q. You use ten years for the lane, and for the settees, and so on?

A. Yes, sir.

Q. Now, I see depreciation, carpets; what does that refer to?

A. The carpeting in the concourse areas, and in the bar areas, if it has carpeting. And generally that would be depreciated over three years.

Q. That's the expected life?

A. Yes, sir.

Q. And is that a figure that allows for such disasters as liquids being spilled, cigar butts ground into the carpet, and so forth?

A. That's our average experience.

Q. Depreciation, drapes; what does that refer to?

A. Draperies which would be hung in the bar areas or

[2534]

the nursery.

Q. Then there are certain other depreciation items, are there not, office equipment, vending; what is R&B equipment?

A. Restaurant and bar.

Q. This is all depreciated, is that right?

A. Yes, sir.

Q. On the individual records for the particular BCOD center, is that correct?

A. Yes, sir.

Q. Now, we have here another heading, license and tax expenses; are those expenses attributable to this center?

A. Those are expenses for that particular center, yes.

Q. One of the costs of the center is the licenses and tax, is that right?

A. That is correct.

Q. And so with these various state franchise tax and property tax, is that right?

A. Yes, sir.

Q. Those are expenses chargeable to each of the centers, is that your testimony?

A. Yes, sir.

Q. Below that there is an area that says

[2535]

insurance, fire insurance and total insurance; those are costs, are they not, of the operations of this center?

A. That is correct.

Q. Then finally you have a total fixed expense, do you not?

A. Yes, sir.

Q. Those are expenses for this center?

A. Yes.

Q. And then you have payroll expenses?

A. Yes.

Q. Those are the people working there, is that right?

A. That's correct.

Q. They are paid by the center?

A. They are paid from Chicago. They are people actually working in that center.

Q. It is a cost for that center?

A. Yes.

Q. You have a total for that?

A. Yes, sir.

Q. Then you have various other expenses broken out, don't you, in addition to payroll, payroll for waitress, payroll for clerks, employee benefits, union pension, employees' meals, insurance other, Workmen's

[2536]

Compensation, traveler meetings, entertainment, regional manager meeting, all of these are costs, are they not, attributable, in this instance, to the center called Interstate Lanes?

A. That is correct.

Q. And it is not just these big items, is it; to get down to janitorial contracts, that's for janitor, is that what it is?

A. That would go into that category.

Q. Is that a cost and expense?

A. Yes.

Q. Then you have pest control; that's an expense?

A. Yes, sir.

Q. And a fire extinguisher, that is an expense?

A. Yes.

Q. Garbage collection, is that right?

A. Yes, sir.

Q. Then we go down to smaller items than that; small tools, that's an expense?

A. Yes, sir.

Q. And many, many items, would you agree, are listed here—I am looking now at page number 6 of the Interstate Lanes P&L statement—such items as bar equipment, refrigerator equipment, and the like, is that

[2537]

correct, these are all broken out here, as costs of the center?

A. Those are maintenance costs, right.

Q. And so, too, supplies of all kinds?

A. Yes, sir.

Q. Bowling, billiard, rug supplies, lighting supplies, nursery supplies, these are all costs, is that so?

A. That is correct.

Q. That is not all. There are things like laundry, utilities, communications expenses, outside services, sales tax—you agree that I am reading items that are on this list?

A. Yes, sir.

Q. These are all costing items, is that right?

A. That is correct.

Q. Then you get down to advertising and promotions, junior shirts, newspaper advertisements, magazine advertisements; all of these are costs, are they not?

A. Yes, sir.

[2538]

Q. And there are many, you agree, that I didn't read, paging through this exhibit?

A. Yes.

Q. This exhibit for identification.

Now, sir, you also show here the revenues, don't you?

A. Yes, they are shown there.

Q. For each center—for this center, in this instance?

A. Yes, sir.

Q. Who created the structure for what should be on that profit and loss statement, who decided?

A. The operating management of the bowling centers, along with——

Q. Did that include you?

A. —along with the comptroller's office.

Q. Does that include you?

A. I have been a part of changes to it. I was not controller of that operation at the time it started, but I have supervised it and have been in on changes that have been made since it started.

Q. Now, sir, these various expenses that I read off to you, these are costs, are they not?

A. Yes, sir.

Q. Was there a single item on this exhibit

[2539]

which reflects interest as a cost of doing business for this center, in this case, Interstate Lanes?

A. No, we did not allocate interest charges to the centers.

Q. And can you tell us whether or not in Exhibit 23 for identification, which is the Brunswick cash needs allocated to BCOD centers for 1965 to 1975, you have allocated interest for these centers, does that cash need include cash for interest?

Mr. McNeill: I don't think the witness has a copy of these in front of him. May I?

The Court: Give them to him.

(Documents handed to the witness by Mr. McNeill.)

A. The interest expenses shown on Exhibit 20, and 22, and 23 are the amounts that would have been allocable to a BCO center if we were to have gone through that kind of a calculation in 1965.

Q. In that regard, you didn't do it in '65, did you?

A. No, sir; we did not.

Q. And why was that?

A. Because for administrative purposes Brunswick policy is to hold the Treasury Department responsible for borrowings. The Treasury Department makes the

[2540]

borrowings, they conduct the negotiations with the lenders, and arrive at whatever the rates of interest are.

The bowling center operations people have no control over borrowings. And for that reason, we did not make an allocation to them, for administrative purposes. The

amount of interest has nothing to do with the effectiveness of a bowling center manager.

Q. Can you tell us, sir, in putting down this figure for interest on these exhibits, what it was that you did, how did you come by that factor?

A. Well, the first thing we did was to identify certain specific loans which Brunswick had, which we knew were related to the bowling equipment receivables.

Brunswick had many loans outstanding, not all of which related to bowling. We eliminated those. These were foreign borrowings, real estate mortgages for plants in other operating divisions. We eliminated those loans before we started.

Q. When you speak of eliminating those loans, are you referring to some specific kind of loans?

A. A loan in Canada, or Europe, or a loan for a plant in Georgia for the MacGregor Division.

[2541]

Q. Did the bulk of Brunswick's borrowing have strings attached; in other words, did the bank state to you, "Brunswick, you may only use this money for a particular purpose"?

A. No, sir.

Q. You didn't eliminate the general loan, did you?

A. No, sir.

Q. What specific loans were there that had strings attached that would prevent your using the money from bowling or from bowling operations?

A. Well, generally the real estate loans would fall into that category.

Q. What were those, loans for the purchase of real estate somewhere?

A. Yes.

Q. You are not talking about domestic bowling centers now, are you?

A. No.

Q. Purchase of real estate in foreign countries and in the United States as well?

A. Yes.

Q. There you had specific loans; is that right?

A. Yes. And those are the ones that we eliminated from our determination.

[2542]

Q. Those are the only ones, aren't they, that you eliminated from your determination?

A. No, sir, there were others. There was a debenture issue outstanding which if we—I think there might have been some justification for including that. It was issued at the time of the increase in bowling business. We did not put that in this calculation.

The ones that we put in here were the ones that the loaners looked specifically to the receivables for their security.

Q. How much are we talking about when we talk about the total amount of Brunswick loans or indebtedness in 1965?

A. At the end of 1965, the total notes payable on long-term debt was 285 million. However, the basis for this exhibit is 1964.

Q. There was $285 million outstanding; is that right?

A. At the end of 1965.

Q. How much outstanding at the end of 1964?

A. At the end of 1964 there was $314,442,000.

Q. That's a bigger figure, isn't it?

A. Yes, sir.

Q. How much did you take away from that $314 million to accommodate these special loans that

[2543]

you spoke of?

A. Approximately $71 million.

Q. So you took off the top, and that's way up high, isn't it, on one of your visual charts, $314 million, you took off the top 71 million; is that what you're saying?

A. I don't believe we showed a chart—

Q. I am making up one, I can see it, so can you, I hope, $314 million, a big bar like that, isn't it, and then up here you have taken off $70 million from that for special loans; is that what you did, and you are left with about $240-some million?

A. Yes.

Q. That $240 million, sir, that's what the BCOD centers are paying interest on or a part of that?

A. That is the total amount of loans which related to bowling. The part that was allocable to BCOD centers actually came down to 24 million, approximately 10 per cent.

Q. What was the loan situation as it existed in 1959, if you know?

A. I don't have that number available.

Q. Do you know approximately how much?

A. I would not know.

Q. How about 1958, do you know approximately how

[2544]

much?

A. I do not know.

Q. Anywhere near 200 million?

A. I don't know.

Q. You don't know one way or the other?

A. I don't have the number available.

Q. Couldn't you give it to us within a tolerance of 20 per cent error?

A. I don't have the number available.

Q. You don't have it in your head?

A. No.

Q. When, if you know—I withdraw that.

What was the business that Brunswick was in in 1958?

A. 1958 we were in the bowling business, we were in the school equipment business, in sporting goods, MacGregor.

Q. Anything else?

A. Bowling was by far the largest piece of that.

Q. Did there come a time when Brunswick went into other businesses?

A. Yes, sir.

Q. When was that, sir?

A. Well, we subsequently acquired Mercury Motors.

Q. In 1958 did you acquire MacGregor Sports

[2545]

Products?

A. It was approximately at that time.

Q. And in 1959 did you acquire hospital supply companies, surgical supply companies, hunting equipment, and also another sporting goods manufacturer named Royal?

A. Those are companies which we acquired, yes.

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CROSS-EXAMINATION.

By Mr. Hoffmann:

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[2615]

Q. Was there ever a BCO division of Brunswick?

A. Yes, there was.

Q. When did that begin?

A. That began, effectively, January 1965. It was being organized in late '64.

Q. What was the purpose of it?

A. The purpose of it was to evaluate bowling centers which were indebted to Brunswick Corporation, which could not or would not, for some reason or other, pay their installment obligations to Brunswick, and this activity was organized to review those establishments, to see if it would be feasible for them to be operated, and if it were, that Brunswick would have a chance to recover some of its investment in this large portfolio of notes receivable.

Q. Along with this rather elaborate purpose,

[2616]

did it also have the purpose of operating those centers?

A. Where it was deemed feasible; yes, sir.

Q. So it would evaluate and it would operate, was that its purpose?

A. Yes, sir.

Q. Did it also have the purpose of acquiring bowling centers?

A. You would have to acquire them in order to operate them, yes.

Q. And how about the building of new bowling centers, in 1965, when BCO was formed, did it include among its purposes the building of new bowling centers to be operated by Brunswick?

A. At the time it was organized, it was not foreseen that that would be a part of the bowling center activity.

Q. When did it become foreseen?

A. Well, I believe it was about in 1969 or '70 that the Sales Department and—well, it actually was just the top division management—had determined that there were many good locations available around the country where,

in their opinion, the market would support a new bowling center. The Sales Department was out looking for prospective investors to enter into contracts, get them interested in establishing a bowling center——

Q. I hate to interrupt you, but is all this

[2617]

answering my question of: When was it foreseen?

A. Yes.

Q. Can you include in your answer the year in which that happened, or have you done so?

A. As I said, I thought it was 1969 or '70—1969 probably.

Q. 1969. And was——

Mr. McNeill: Would you like to finish your answer, sir?

The Witness: It was 1969.

Mr. McNeill: I mean your earlier answer was——

The Court: Mr. McNeill, please. Overruled. Next question.

Q. Mr. Barron, did there come a time in which the BCOD, or the Bowling Operating Division of Brunswick, acquired bowling centers which involved AMF equipment, and the use of that equipment?

A. We have a program within the bowling center operations activity for providing management services,——

Q. Did there come such a time——

A. —and we——

Q. —is my question.

A. We did manage some centers with AMF equipment.

Q. Didn't you do more than just manage centers

[2618]

with AMF equipment, didn't you acquire such centers?

A. In connection with that program there were some owners who, rather than operate on a straight management contract——

Mr. Hoffmann: I am asking you a question—your Honor, may I have this witness instructed to answer it yes or no.

The Court: Mr. Barron, answer the question.

Repeat the question, please.

Listen to it carefully. And don't volunteer any information, Mr. Barron. If you don't understand it, say, "I don't understand it."

(Question read as follows:

"Question: Didn't you do more than just manage centers with AMF equipment, didn't you acquire such centers?")

The Court: Answer both questions yes or no, if you can.

A. Yes, we leased some.

Q. Is that acquired? My question is: Did you acquire such centers?

A. In that context, yes, you can say we acquired.

Q. Can you name any such centers that you acquired —which you, Brunswick, acquired, which involved the use of AMF equipment?

[2619]

A. Not offhand; no, sir.

Q. If I put to you the name of one such center—does Rahway, New Jersey, mean anything to you?

A. I know that we have been operating a center there, but I don't know what kind of equipment it has.

Q. Now, sir, was it one of the functions of BCOD, starting in 1965, to sell bowling centers which it had acquired?

A. It was the company's policy to make these centers available for sale. The BCOD organization did not sell them. They were sold by the bowling sales organization.

Q. And what was that called?

A. It was called the Bowling Division.

Q. Now, sir, do you know of any such sales taking place during the year 1965?

A. No, sir; none were sold in 1965.

Q. During the year 1966? Can you answer my question without looking at any notes?

A. Without looking at a reference, I can't tell you, no.

Q. You don't know one way or the other. Do you have notes that would show the answer to my question?

A. I have notes that show some centers that were deactivated and I know that some were sold.

Q. Do you have notes which show which were sold?

[2620]

A. No, sir.

Q. You distinguish between deactivation and sales, don't you?

A. Not within the BCO organization.

Q. Where do you make that distinction?

A. We would do it—to determine the ones sold, we would go back and analyze our sales records.

Q. Is there any difference in your mind between deactivation and sale?

A. As it relates to the BCO activity, there is no difference.

Q. You put both words down on your charts, don't you, deactivation and sales; are you now saying that where your chart shows deactivation and sales that it is the same thing, that it means one and the same thing?

A. Yes, sir; as far as BCO activity is concerned, they are.

Q. Now about those notes that you have, do you differentiate between sales and deactivation there, the notes you just referred to?

A. No, sir; they are all listed as deactivation.

Q. Do you have any way of telling us here and now, in 1973, what centers, if any, were sold by Brunswick?

A. I can think of some. I don't know the particular

[2621]

years.

Q. Well, sir, is there any record that Brunswick keeps that shows what it sells, what centers it sells?

A. Yes, sir; there are such records.

Q. There would be some kind of a transaction file, wouldn't there?

A. Yes, sir.

[2622]

Q. We are talking about matters that could involve a half million dollars, or more, are we not?

A. Yes, sir.

Q. You have a record somewhere, do you not?

A. Yes.

Q. But you don't know about that?

A. I don't have it with me. I could obtain it.

Q. But you have notes about deactivation?

A. Yes, sir.

Q. Is there anything else you lump with deactivation besides sales?

A. Casualty losses, fire.

Q. Anything else?

A. No, those are the main ones.

Q. Do you know anything about Brunswick having set forth in 1965 a salvage policy in respect of acquiring centers?

A. Yes, sir.

Q. Would you define that policy for us, as you remember it?

A. The reason that Brunswick entered into the operating activity——

Q. Would you please tell us what the policy was, not the reason; the policy, if you know. If you don't know, that's an answer.

[2623]

A. I don't understand your question.

Q. Did Brunswick have, in 1965, when it set up the BCOD division, a policy concerning the sale of centers owned or operated by BCOD?

A. Yes, it did.

Q. What was that policy, if you know?

A. That policy was that every one of these centers were available for sale to qualified purchasers.

Q. Is there anything about the price in the policy, as you understand it?

A. I don't know that the price was in the policy itself. There was a formula for setting price and it was based on the operating results.

Q. Do you have among your papers Brunswick Exhibit 7?

A. Yes, sir.

Q. Would you be kind enough to bring it out? If you don't have it, I can supply you with it.

A. Do that, please.

(Handed to the witness by counsel.)

Q. Would you be good enough to look at the caption, sir? If you find it necessary to refer to any other documents in answer to my question, would you be kind enough to call it to my attention, please?

A. Sure.

[2624]

Q. You are looking now at Brunswick Exhibit 7, are you?

A. Yes, sir.

Q. The number of bowling centers BCO commenced operating, the number disposed of by sale, lease or deactivation by BCO, 1965-1972 in the United States.

Who prepared this exhibit?

A. This was prepared in our accounting department.

Q. Under your supervision?

A. Yes, sir.

Q. Did you play an active role in its preparation?

A. I played an active role in the supervision of the people who gathered information, yes. I didn't physically do it myself.

Q. Do you know what records were used in compiling these figures?

A. These were the records of the centers operated by BCOD.

Q. Now, then, be good enough to look at 1965. Do you see a heading "Commenced operating 124"?

A. Yes, sir.

Q. What does that mean, is that the total number of centers which BCOD began to operate in that year?

A. Yes, sir.

Q. Then you disposed of zero, do you not?

[2625]

A. Yes.

Q. And you see net transfers, 124. Did I understand you to testify the other day that by that transfer you mean a transfer within the Brunswick organization?

A. That is correct.

Q. A transfer from whom to whom, from where to where, from which to which; who transferred to what?

A. The Installment Credit Department did the actual legal repossession of the equipment in the center and it is transferred to Bowling Center Operations Division for operation.

Q. Brunswick is one big company, isn't it, with an Installment Credit Department, and a bowling operation division, and other things; why was it necessary that there should be a transfer from one part of this big company to another part of this big company?

A. Because the Installment Credit Department had certain responsibilities regarding the accounts and the bowling center operations group was another function which had responsibilities for operating bowling centers. There were two different areas of responsibilities.

Q. Did they keep separate books?

A. Yes, sir.

Q. These departments, the Installment Credit

[2626]

Department——

A. Beg pardon?

Q. Did the Installment Credit Department have books separate from those kept by BCOD?

A. Yes, sir.

Q. What did this transfer look like, was it a piece of paper of any sort?

A. There were transfers, yes. We call them interoffice vouchers, and the information relative to the centers, the number of equipment repossessed and turned over to BCOD were recorded on these interoffice journal vouchers.

Q. Wouldn't that piece of paper show a value for the centers?

A. It would show the value for the equipment in the house, in each individual house, yes.

Q. The equipment?

A. Yes, sir.

Q. How about the center itself; this is a transfer of a bowling center, isn't it?

A. It was a transfer of the equipment only.

Q. Well, how did the bowling center get into the hands of BCOD, if it did? First may I ask you, did the bowling center get into the hands of BCOD?

A. Yes, sir.

[2627]

Q. How did that happen?

A. Well, when BCO evaluated a house, and made a decision that it was feasible to operate it, they would negotiate with the landlord to obtain a lease, they would negotiate with the owner of the chattels to either buy them, or rent them, to continue to operate them, and then the equipment came from the Installment Credit.

Q. Would they negotiate for assignment or transfer of the liquor license?

A. Yes, sir.

Q. Who would do that?

A. They would do that through——

Q. Who would do that?

A. The people in the bowling center operations group.

Q. And then how would it get from bowling center operations group to the operating division, BCOD?

A. They are simultaneous. They are the same thing.

Q. But the Installment Credit Division is different, is that it?

A. Yes, sir; that was a separate group of administrative people.

Q. Now, did the bowling center operations group pay for any of this on the records of Brunswick?

A. In cash; no, sir.

Q. I didn't ask you in cash. Did they pay in

[2628]

any way?

A. They paid in terms of setting up intercompany accounts for the amounts being transferred back and forth, yes.

Q. Would there be an account for BCOD which would show the amount transferred for—I'm sorry—which would show some form of payment for a center transferred to it?

A. There would be an account with the bowling division, or with the corporate office, for the value established on the books at the time of the transfer.

Q. We are talking now of the center, aren't we; we are not talking about the installment division handing over the pinsetters, we are now talking about the center, is that right, is that what your answer is addressed to?

A. Yes, sir.

Q. And that has to do with such matters, say, as the liquor license, doesn't it?

A. Yes, it would.

Q. Do you have any idea of how much a liquor license costs, let's say, on the average for these centers?

A. In some places it doesn't cost anything, in other places it costs up to several thousand dollars.

[2629]

Q. Would you say up to $50,000?

A. I don't have those specifics. I don't know.

Q. You said several thousand dollars. Where did you pick that number from?

A. Well, I know that in the State of California, for example, it is necessary to purchase a license from an existing holder.

Q. Do you know what the cost of that is in California?

A. It is assigned by the State Liquor Commission and it is ten thousand, or fifteen thousand dollars is not unusual.

• • •

[2631]

Q. Now, sir, coming back to Brunswick Exhibit 7, I believe you still have the copy which I gave you before the recess?

A. Yes.

Q. Were there any transfers made by any divisions to the BCO centers other than what you talked about, that is to say, other than the Brunswick Installment Division, in connection with the acquisition of bowling centers?

A. There were no centers that were built by Brunswick. Those would be in the——

Those would be in the Commenced Operating category, and also in the net transfers.

Q. Do you know how many of those there were?

A. I don't know the exact number. It was about seven or eight.

Q. Now, sir, when there was a transfer to BCO and you did open a page on your computer machine for

[2632]

P&L for the BCO center, was there any asset listed as a

result of the transfer under the—on the page for the particular bowling center?

A. The assets are a part of a balance sheet, sir.

They would not be listed on the P&L statement.

Q. Was there any individual balance sheet for the individual bowling center which showed the assets of that center?

A. We could construct one from our records.

Q. Would you please answer my question, sir?

Was there, is my question.

A. We do not prepare——

Mr. Hoffmann: Your Honor, may I have an answer to my question?

The Court: Why can't you answer the question?

The Witness: I'm trying to.

The Court: You're not.

Please read it back.

(Record read.)

The Court: Can you answer that? Was there?

The Witness: No.

• • •

[2635]

Q. How do we know, then, how many centers were sold or leased or deactivated by BCO by reference to Brunswick Exhibit 7; can you tell us that?

A. Brunswick Exhibit 7 groups them all in one category.

Q. It groups more than the centers; isn't that your testimony, you just said it throws in there the machines that were separately leased or equipment that was leased, not the centers?

A. Brunswick Exhibit 7 shows the number of centers that were disposed of by BCO, and if the equipment in those centers was leased to a customer it is included in here as a disposition.

Q. Now, sir, when you say "deactivated," do you mean the same thing as leased?

A. Deactivated means a center which BCO stopped operating.

[2636]

Q. For any reason?

A. It would include those subsequently leased.

Q. Would it include all centers which BCO stopped operating?

A. Yes, sir.

Q. Regardless of what happened to the center; is that right?

A. Yes.

The Court: Would it include 20 pinsetters that were taken out of a center and the center deactivated, and those 20 pinsetters leased to Mr. Jones in Peoria, Illinois?

The Witness: If Mr. Jones took over the entire center, yes.

The Court: Listen to my question.

Would it include X center, now it is deactivated, they take 20 pinsetters out of that center, "they" meaning Brunswick, and they lease them to Mr. Jones in Peoria, Illinois, just the pinsetters; would that be included in this?

The Witness: No, it would not.

• • •

[2641]

Q. Is it not possible for us to just talk about one at a time on this chart?

A. All right. Well, they are all grouped in one column.

Q. You have the word "sale" first; is that right?

A. Yes.

Q. Now I'd like to talk about sales. Will you play this with me, will you go along with me and just talk about sale? We will forge for a moment "lease"

[2642]

and we will forget "deactivation"; is that agreed?

A. That's fine.

Q. Does this heading, I am asking it, I think for the third and possibly the fourth time, does this heading under the word "sale" refer to the number of bowling centers BCO commenced and operated and later sold?

A. Yes, it does.

Q. And is that all it refers to?

A. The word "sale"?

Q. Yes.

A. Yes.

Q. And it has nothing to do with including, does it, it is—that's what it is, it is the sale of centers; is that right?

A. Yes.

Q. It is not referring to sale of anything else but centers, is it?

A. That's right.

Q. Not referring to the sale of particular machines or equipment, but the whole center; isn't that your testimony?

A. Yes.

Q. Now, "lease," what is meant by "lease," separate from "sale," separate from the other words?

[2643]

A. Well, as I explained, there were some centers that BCO operated, subsequently stopped operating, and in which equipment was leased to third parties.

Q. And that's not centers you're talking about; is that right? You say the equipment was leased to third parties, you're not saying the centers were leased; is that right?

A. That's right. But BCO stopped operating the center.

• • •

[2647]

Q. Do you differentiate deactivation from lease?

A. Yes, sir.

Q. What is the difference?

A. Deactivation means removal of equipment, taking it out of the bowling center completely.

Q. And do you differentiate deactivation from sale?

A. Yes, sir.

Q. What is the difference?

A. A sale is a sale of the going operation.

Q. Does that include the machinery when you sell the going operation?

A. Yes, sir.

• • •

[2649]

Q. Now, sir, in respect to sales, if we wanted to find out what Brunswick got from sales, first we would have to know, wouldn't we, what centers were sold?

A. Yes, sir.

Q. You don't know that, do you?

A. I don't know them exactly. I could look it up.

Q. Well, you said that the other day. You said you could call Chicago maybe and find out. Wasn't this prepared by you or people working for you?

A. Yes, it was.

Q. Did you ask them to find out what happened to the sales?

A. I asked them to find out for me which centers were disposed of by sale, or by lease, or deactivation. I didn't ask them to segregate them.

Q. You weren't interested in what Brunswick got back from these sales, and other dispositions?

A. That had nothing to do with the preparation of this chart.

Q. Did it have anything to do with the preparation of any of the charts that you put in evidence?

A. No, sir.

• • •

[2653]

Mr. Hoffmann: I am looking at Exhibit 8. It is not quite the same as 7. But it shows the number of centers operated at the year end for the various years, and the net transfers.

(Exhibit 8 placed on easel.)

By Mr. Hoffmann:

Q. You only could remember one sale, is that right, when you testified about this the last time?

A. Yes.

Q. And you know the name of that company?

A. I believe that was Cabrillo Lanes.

Q. Cabrillo Lanes. Do you know of your own

[2654]

knowledge whether or not any other Brunswick center was ever sold by Brunswick?

A. Yes, sir; I know of my knowledge that several were sold, but I don't specifically know their names.

Q. Do you know when that happened?

A. In the last several years. One that was sold was in Twin Falls, Idaho——

Q. Well, in the last several——

A. —in Orlando, Florida——

Q. Do you know any sold in 1967?

A. I don't know them specifically by year, none of them.

Q. Well, you said in the last few years.

A. Several. I said in the last few years, yes.

Q. What do you mean by few, more than 15, or 20?

A. In the period 1966 to 1972.

Q. In the last six years, is that what you mean?

A. Yes, sir; seven years.

Q. So that when you come to these items, disposed of, '66, '67, '68, '69, '70, '71, '72 you know that several or a few were sold.

A. Yes, sir.

Q. And you don't know exactly how many or when, is that right; is that your testimony?

[2655]

A. That is correct.

Q. And if I suggested to you that up to 1970 the total number was 2, would that seem out of line in any way?

A. I couldn't quarrel with you one way or the other.

Q. But you think there have been more in all, in the whole period through '72, is that right?

A. Yes, sir.

Q. Up to a few. Could you pinpoint a few, tell us just what it is; it is more than two, isn't it?

A. Yes.

Q. Can you give us a number, about?

A. I gave a number of about 7 or 8.

Q. Do you hold to that; is that what you think is the accurate number?

A. I think it is close to that. I don't know the exact number.

Q. It could be less?

A. It could be less, could be more.

• • •

[2658]

Q. Now, Exhibit 7 becomes Exhibit 8, is that right, the data from 7 is used on 8, is that right?

A. Yes, sir.

Q. This shows the number operated at year end, doesn't it, by BCO for each of those years, that's the point of the green line?

A. Yes, sir.

Q. This heading here, net transfers of centers to BCO for operation, are those all transferred from one source; where it says net transfers to BCO of centers, to BCO for operation, the bottom part, the blue part of the graph.

A. It would be those that were transferred by way of repossession or those that were transferred by way of building new centers.

Q. When there was a new center built, did it then get transferred on the books and records of Brunswick to some BCO division, is that what you are saying?

A. Yes, it was recorded in the "Commenced Operating" category.

Q. And did that BCO center pay anything to Brunswick for the new center—for getting the new center transferred to it?

A. It recorded the transaction with the bowling

[2659]

Division office for the value of the assets, yes.

Q. Who is the "it" we are talking about now?

A. The bowling center operation's assets were recorded and an offsetting credit to the sales group.

Q. Was the bowling center required to pay any branch of Brunswick out of its receipts for the cost of building the new center?

A. It was assessed a rental charge.

Q. Was the rental charge deducted from the operational income of the BCO center that operated the new center—or was the new center?

A. Yes.

Q. Was anything similar to that done when the 124 centers, which you started operating in BCO in 1965, were placed on the books of BCO?

A. There was a charge for the assets as recorded and a credit to the—at that time the Installment Credit Department, for that reserve. And those centers paid their own rents, that is—

Q. When you say—

A. —the rents were paid for them and they were charged to them. They didn't pay their own bills.

Q. When you say "paid their own rents," you mean rents, now, for the use of the real estate; is that what you are talking about?

[2660]

A. Yes, that is correct.

Q. But they didn't pay rents for the use of automatic pinsetting machines, did they?

A. No, sir.

Q. Or for lanes, isn't that so?

A. No, sir; they were charged the depreciation on them.

Q. Just that.

A. That's right.

Q. And that depreciation is not something you actually pay over, is it?

A. No, sir.

Q. It is a bookkeeping entry, isn't that your testimony?

A. That is correct.

• • •

[2672]

Q. Mr. Barron, in relation to 20 and also the charts which are 22, 23, which according to your testimony pick up the information from 20, you put down principal and interest for the years 1965 through 1975; is that right?

A. Yes.

[2673]

Q. Have you also made an effort to put down the various sources of income flowing into the Brunswick company during that period?

A. No, I did not.

Q. Would you be good enough to—

Mr. Hoffmann: May I have back what I gave you before? That would include 7, I think.

Thank you.

Q. Would you take a look, please, at Plaintiffs' Exhibit 32. Plaintiffs' Exhibit 32 is the BCOD consolidated summary, domestic operations only.

Do you notice the bottom line is called cash flow, is it not?

A. Yes.

Q. And this cash flow is negative, that is, a losing quantity for 1965; isn't that right?

A. Yes.

Q. But there afterwards in 1966, 1967, 1968, 1969, 1970, 1971 and 1972 there is a total of all on the plus side; is that right?

A. Yes.

Q. That means, does it not, that Brunswick's consolidated summaries for its domestic centers showed that there was a positive cash flow flowing into Brunswick; isn't that right?

[2674]

A. That's right.

Q. And that on Plaintiffs' Exhibit 32 runs from 986,000 on the positive side in 1966 upwards each year, in 1967 it is over a million, in 1968 it is close to two, in 1969 it is close to three, in 1970 it is over four, 1971 it is over six, and in 1972 over eight million dollars; is that right?

A. Yes.

Q. Was any of this money, any of this positive cash flow used to pay off the debts of Brunswick?

A. It went into Brunswick's general funds from which the debts were paid.

Q. Did the funds go to the fellow who loaned money to Brunswick?

A. It all went into Brunswick's general funds, it lost its identity when it got there, and Brunswick paid the bills.

BCOD Division did not pay the interest or the principal. That was handled by the treasury department——

Q. But it sent the money back into other Brunswick—to pay the bills?

A. It went into the corporate treasury, yes.

Q. Those bills were paid, weren't they?

A. Yes.

Q. The loan, the principal was retired from

[2675]

time to time and the interest was paid; isn't that true?

A. That's true.

Q. And wasn't this positive cash flow used for that purpose?

A. It could have been. We didn't keep our records—the exact tracings of the dollars.

Q. Don't you know whether or not it was?

A. It went into the general funds of Brunswick Corporation.

Q. $8 million just disappeared there in 1972, you know where it went out, don't you?

A. It went out for all sorts of things.

Q. But one of the things was the payment of debts; isn't that so?

A. Brunswick's general treasury funds paid their debts, yes.

Q. These are the debts which were involved, are they not, in Plaintiffs' Exhibit 20, which as reference to principal and interest; is that right?

A. Yes.

• • •

[2684]

Q. Was each one of the centers valued and did—I'm sorry—was each one of the centers valued for the purposes of these vouchers?

A. At the time it was commenced operating by BCO.

Q. At the time when Brunswick handed over to BCO a voucher?

A. Each center had a specific value, yes.

Q. How was the value ascertained?

[2685]

A. It was ascertained by determining the installed cost of the equipment in that particular house, at the time of the installation originally, and depreciating that value down to whatever the value was at the time of takeover.

Q. When you say depreciating, did the equipment get credit for payments which were made on it?

A. It was based on installation costs less depreciation.

Q. Well, was there a subtraction made from the number for the down payment that was made?

A. No, sir.

Q. Was there a subtraction made from the number for the payments subsequently made before the equipment was repossessed?

A. That had no bearing on the calculation.

Q. What was the calculation designed to show?

A. The calculation was designed to show the depreciated value based on initial installed cost.

Q. You are speaking now of value, you are speaking of the value of the equipment, isn't that right, the pinsetter, the lane; is that right?

A. That's right.

Q. Did these vouchers which supposedly reflect the value of the center include the value of the good

[2686]

will, the value of the—the value of the good will?

A. It is doubtful if there would be any good will in a center that was being repossessed.

Q. Sir, good will has something to do with patronage, doesn't it, with people coming to the center; isn't that right?

A. That would be a factor.

Q. It is doubtful that you would reopen the center if nobody was coming there.

A. We reopened it on the basis that somebody would rehabilitate it.

Q. You thought there would be customers coming in and bowling?

A. We thought we could build up the customers in the establishment there.

Q. Didn't you also think that you could hold on to the customers that already existed in the establishment?

A. We hoped to.

Q. You say that's got nothing to do with good will?

A. I say that good will is an excess value over whatever you acquire.

In my opinion there would be very little good will in a house that was repossessed after losing money.

[2687]

Q. You mean because the poor proprietor was unlucky enough to have his equipment repossessed; is that what you mean?

A. Because the proprietor didn't pay his bills and because he had run down the business.

Q. He didn't pay his bills. How do you know he had run down the business; you don't know any such thing, do you?

Why are you saying it here and now?

A. Because that's been my observation of the evaluations that I read.

Q. Is it your testimony that the many centers acquired by Brunswick from proprietors and other sources had very little patronage at the time of the acquisition?

A. It is my opinion that the centers that were acquired by BCO were poorly patronized for the most part and had no good will.

[2688]

Q. You closed down a lot of centers, didn't you, never bothered to open them up, isn't that right?

A. That is correct.

Q. Didn't you reach a decision as to why you closed them down?

A. Yes, we did.

Q. What was the reason for closing them down and not bothering to operate them?

A. Because we didn't think they could be rehabilitated.

Q. Now, another way of saying that, you didn't think there was enough business there, isn't that right?

A. Either there wasn't enough business or there wasn't enough that could be generated, yes.

Q. Out of these centers that you acquired, you closed down some and you decided to operate some, isn't that so?

A. That is so.

Q. As to the ones which you operated, didn't you think there was business there, enough business to warrant operating the centers?

A. Either enough there or enough that could be generated, yes.

Q. And some of the values would include the location, would they not, of the center; wouldn't that

[2689]

be one of the reasons why you decide to maintain it, because it is in a good location where customers might come?

A. Yes, sir.

Q. And another might be the condition of the center, isn't that so, cleanly kept, nice equipment; wouldn't that be so?

A. That could be a consideration, yes.

Q. That would have been a factor in deciding whether to maintain it?

A. Yes, sir.

Q. Another might be the number of leagues committed to the center, or which Brunswick thought might be committed in the future, wouldn't that be so?

A. That would be a consideration.

Q. Did any of these considerations you just mention have anything to do with good will?

A. Yes, sir.

Q. That is good will, isn't it?

A. How would you put a value on it?

Q. That is good will, isn't it?

A. Those are considerations in establishing good will.

Q. Now, sir, in connection with the matter of interest which you have in your chart, in Exhibit 20, assigned to these centers, this interest was in payment

[2690]

of loans that Brunswick made, wasn't that your testimony?

A. This was in payment of loans which Brunswick had outstanding.

Q. And some of those loans were secured loans, is that right?

A. Yes, sir.

Q. And by "secured" we mean having some property behind them; is that the meaning of secured, in your mind?

A. Yes, sir.

Q. Those secured loans, did they have behind them the property of the bowling centers?

A. They had the equipment behind them.

Q. And some were unsecured loans, is that right?

A. Yes, sir.

Q. And those unsecured loans, they had no specific equipment assigned to them, isn't that right?

A. That is correct.

• • •

[2694]

Q. I would like to show you a copy of the annual report of Brunswick for 1965, and I address your attention to page 7.

• • •

[2696]

Q. "Additions to plant equipment and leasehold improvements total $31,517,000, 1965, an increase of $19,644,000 over the 11,873,000 expended during 1964.

Most of this increase resulted from the transfers of repossessed bowling equipment, from installment notes receivable, and inventories to Brunswick-operated centers. These transfers did not require any outlay of cash."

Sir, I read that correctly, didn't I?

A. Yes.

Q. What is meant by this sentence, "The transfers did not require any outlay of cash"?

A. The corporation had already recorded assets on its balance sheet for certain equipment notes receivable and inventory items, and these items were the items that were referred to.

The cash outlay came at the time these items were manufactured and installed.

[2697]

Q. Yes, that could have been anywhere back in the '50's; isn't that right?

A. It extended back into 1957.

Q. "These transfers did not require any outlay of cash"; does that mean, sir, that no cash was allocated to any of the BCOD centers?

A. No, sir, it does not.

Q. What does it mean in that regard?

A. It means that this particular transaction recording assets on the BCO books of account did not require cash.

Q. You set up records, didn't you, for the BCO centers, the records we talked about for the last couple of days, the profit and loss statements, the printouts?

A. Yes.

Q. All sorts of cash expenses and costs were indicated, weren't they, on those statements?

A. Yes.

Q. In any of this cash that's referenced here, any of this reflected in any way on those profit and loss statements?

A. Asset values are not stated on a profit and loss statement. They are stated on a balance sheet.

Q. You didn't have any asset value sheet, did

[2698]

you, for a BCO center?

A. For each individual center, no. For the division as a whole, we did.

Q. But not for each center?

A. No, sir.

Q. You didn't have any of this, then, allocated to any individual center, did you?

A. Yes, we did.

Q. I beg your pardon, sir?

A. We did.

Q. Where did that happen?

A. It was on the books of account of the BCO division. We just merely didn't publish a statement on it all of the time.

Q. When you say you had cash allocated to an individual center, what do you mean by that?

A. Its asset value.

Q. Coming back to cash, Mr. Barron, please, t-e reference here is "outlay of cash."

In any of the record keeping of BCO was there an outlay of cash charged against an individual BCO center?

A. This reference in this statement is to the transactions recording the initial set-up of the bowling center operations, and it says that there was no cash

[2699]

outlay involved in these transactions.

Q. Then you are not quarreling with this at all?

A. I'm trying to clarify it for you.

• • •

[2712]

Q. And you know that it was used when combined with funds generated from other sources and was sufficient to finance the company's additions to fixed assets; do you know that?

A. It was in the general corporate funds.

Q. Aha. And do you know it was used to pay State, local and Federal income taxes of $8,753,000; do you know that?

Mr. McNeill: Your Honor, may I object to the form of the question? I'm not sure what the "it" refers to any more. It was used to pay for this purpose or that purpose——

Mr. Hoffman: If you have any doubts, Mr.

[2713]

McNeill, let me reassure you that I'm referring to the money listed on Brunswick's Exhibit 20, in the amount of $24,435,000, which is the portion of loans allocated to all equipment taken over for operation by BCO in 1965. That's the "it" I am referring to.

[2714]

Q. Now, sir, that money was used for taxes generally for Brunswick, was it not?

A. It went into the Brunswick general funds, yes.

It could have been used for——

Q. Used to meet the general operating needs of Brunswick, was it not?

A. It could have been used for anything.

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[2720]

Q. Mr. Barron, when BCO took on a center, if I understood your testimony—we went over this very

[2721]

carefully—when it took on a center, what it did was to arrange to purchase or lease real estate from some stranger, a landlord, or seller of property, isn't that right, it arranged to acquire a premise that included lots of things that had nothing to do with the equipment which had been put on an installment sales contract, isn't that right, the bar, the bar license, the snack bar, the carpeting, and lots of other things that we went through, isn't that so?

A. Yes, sir.

Q. Now, that center that we are talking of, which is a BCO center, that comes into being only when BCO creates it, isn't that right, when it gets the lease?

A. That center came into being the day the equipment was installed and when it was opened for business. That center existed in 1957 through 1965.

Q. When Brunswick installed equipment, did it have any arrangement with the landlord which gave it the right to the real estate?

A. In those years, no.

Q. Did it have any arrangement with the people who supplied the carpeting that if the bowling center operator were to go broke, it, Brunswick, would get the carpets?

[2722]

A. No.

Q. Did it have any arrangement with vending machine manufacturers that if the center went broke it would get the vending machines?

A. No.

Q. Did it have any arrangement relating to anything but the pinsetters and lanes that it sold to this fellow?

A. No.

Q. And yet you say that when Brunswick made arrangements to buy carpets, to buy vending machines, to take over perhaps other men's obligations on such machines, and to get liquor licenses, to install snack bars, to buy or create new bars, to redecorate, to put up a Brunswick sign, and get the real estate, to get the parking lot, that that is what it had from the beginning when it sold the pinsetters and the lanes?

A. My testimony is that that stuff existed prior to the time that Brunswick took it over. That stuff existed when the establishment opened for business.

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[2723]

Q. No, what has somebody else's carpets got to do with Brunswick?

A. It doesn't have a thing to do with Exhibit 20.

Q. And somebody else's vending machines, and somebody else's bars, and somebody else's liquor licenses, all these came to Brunswick, not when it sold its pinsetter, or its lane, but later on, when Brunswick decided to operate a center, isn't that so?

A. When Brunswick decided to operate a center, and went out and negotiated with those landlords and equipment owners for that equipment.

Q. Yes. And then it got a center.

A. And that has nothing to do with Exhibit 20.

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[2724]

Q. Sir, was this 20 designed to compare the

[2725]

Brunswick center in some way with the independent proprietor whose activities are reported on Plaintiffs' Exhibits 1 and 1A, where there is an interest factor?

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A. Yes, it was designed to show what Brunswick's principal and interest payment requirements were on those centers being operated by Brunswick.

Q. And just to refresh us about it, it was not based on the profit and loss statements which you furnished to us for these individual centers?

A. No, it was not.

Q. Nor was it based upon any broken out records for the particular BCOD-operated center; that was your

[2726]

testimony, was it not?

A. That is correct.

The Court: Are you telling this jury it was prepared to meet the allegations, or charges, or statements, or figures, or statistics—call them what you may contained in Plaintiffs' Exhibit 1A?

The Witness: Yes, sir.

The Court: All right.

By Mr. Hoffmann:

Q. Now, would you be good enough to look on your copy of Plaintiffs' Exhibit 1. We have a heading for Proprietors, Interest, and Depreciation, and Cash Need, do we not; and under Interest, a pinsetter, with a price of $8100, and a down payment of $500.

Do you agree that accords with Brunswick's sales practices?

A. Generally speaking, yes.

Q. And so $7,600 remains to be paid, after the down payment at that time, which was $500.

Now, then, there is an interest factor of 23 per cent. And by taking the number of years for the pinsetter contract, which was eight years, we were able to come out with a figure of $218 as interest on a pinsetter, is that correct?

[2727]

A. That would be your average annual interest, yes.

Q. Is that what you referred to as straight line, or single line accounting?

A. I referred to that as average, because the interest would have been higher in the earlier years and would have been lower in later years.

[2728]

Q. It is a perfectly proper accounting technique to average it off that way, is it not?

A. I don't think so, no.

Q. There is some other technique that should have been used, is that your testimony?

A. When you borrow money and pay an installment loan, you are always paying more interest on the higher principal balances. You don't average out your interest payments. You pay higher amounts of interest in the early stages of the loan and you pay lower amounts in the later stages.

Q. There are two ways of making the averaging, aren't there; if you are showing it over an eight-year period, you come out with the same amount at the end of eight years, don't you?

A. That's what I said, that's an average.

Q. Is there anything wrong with putting down an average for each year?

A. No, if that is what you wanted to do.

Q. All. That's what we wanted to do.

A. Okay.

Q. And you don't see anything wrong with doing it, as an accounting or other matter?

A. It is an average. It is not representative of any particular year.

[2729]

Q. It is an average over the eight-year span. That is all it purports to be.

A. All right.

Q. Now, with the lane, you have no quarrel with the price of forty-five hundred?

A. No, sir.

Q. And, again, with the down payment.

A. No.

Q. $900. And it left thirty-six hundred to be accounted for.

And an interest factor of .1425 over five years, which was the contract life, is that right?

A. Yes, sir.

Q. Again, we have an average. It comes out 102, and probably some cents, if you are going to average it. You have no objection to the arithmetic?

A. No.

Q. And so this figure, $320 a year interest, six percent, you do not quarrel with, is that right?

A. No, sir.

Q. When you say that, you mean you don't, that you don't quarrel with it?

A. I don't quarrel with it. It's an average.

Q. You don't think it is wrong.

A. Beg pardon?

[2730]

Q. You don't think it is wrong?

A. It's an average, that's all.

Q. Now, then, we have a depreciation factor, pinsetter, $8100, is that figure accurate?

A. Yes, sir.

Q. A lane, 4500; is that accurate?

A. Yes, sir.

Q. And then we have another $2400—carpets, signs, cash registers, bar, snack bar, intercom, safe, et cetera—is that accurate?

A. It would vary, but I wouldn't quarrel with the number. It is fairly representative.

Q. And total, then, of $15,000 per lane, is that right?

A. Yes, sir.

Q. And now, in order to get depreciation—there is a lot of testimony on this—we premised that the equipment would last 15 years, and we then got a depreciation factor of $1,000 per lane per year, is that right?

A. That's the way I interpret that, yes.

Q. And it is your feeling that perhaps it could be done over a 10-year span, or some other span of years, but that you saw nothing wrong with this accounting method, is that correct?

[2731]

A. Right.

Q. So you have no difference, then, with this averaging, or this computation of interest at $320 a year, or $1,000 per lane depreciation, is that right?

A. Only what I have already expressed, about the average.

Q. Yes, that you would prefer perhaps if there had been some different way of expressing it, but it would come out the same over the period of years.

A. It would come out the same——

Q. The total.

A. It would come out the same in total, yes. But those figures for interest are not representative of any particular year.

Q. Well, they are representative of an average, of the total—

A. Correct.

Q. —spread over the eight years, or the five years, as the case may be.

A. That is correct.

Q. Then having established that, here we have cash need, don't we, an unpaid balance that we have to pay, of $7600, that may go to pay for Brunswick's buying up some sporting goods houses, but we have got to pay it, don't we, because we owe it under contract

[2732]

of the machines; you don't quarrel with that unpaid balance?

A. No, I don't quarrel with the unpaid balance.

Q. And the same with the unpaid balance of $3600 on the lanes, you don't quarrel with that?

A. No.

Q. It is right, as far as you know. And the same is true with the interest item, $1,748 for the pinsetter, $513 on the lane, is that—

A. I have no quarrel with it.

Q. No quarrel. Then, again, with the arithmetic on the bottom, it is simply division—eight goes into 9,348, that's an eight-year span, and we come out with $1,168; and five goes into 4,113, and we come out with $823; and that equals a cost of $1,991, which we rounded off at $2,000 a lane. No quarrel with any of that, sir?

A. You referred to cost. It represents the total payments required.

Q. It is cash need.

A. Right, not cost.

Q. I'm sorry, if I used the word, "cost." It is cash need that we are referring to.

A. That's right.

Q. And you have no difference with that?

[2733]

A. No, sir.

Q. No difference with plaintiffs' Exhibit 1, excepting the limiting thing you said, that you might prefer some other form of getting at the yearly interest other than average, is that correct?

A. Yes, it is not representative.

Q. Not representative of the needs of perhaps all customers; is that what you mean when you say—

A. It is not representative of the needs of all customers, it is not representative of the needs of any particular customer in any particular year.

Q. Why do you say that?

A. Because you added them all up and divided by five, or by eight.

Q. You mean the interest would have been slightly different in different years, depending upon the amount of outstanding balance.

A. It would be quite a bit higher in the earlier years, and would be quite a bit lower in the later years.

Q. When you got through with the whole span of time, it would be the same.

A. The total dollars.

Q. Total dollars, yes.

A. Yes.

[2734]

Q. Now, sir, we come to plaintiffs' Exhibit 1A, depreciation and charges for determination of net income by Brunswick BCOD centers for pinsetters and lanes, and by Brunswick customers. Depreciation on Brunswick's customers, pinsetters, $8100. That's simply the cost of the pinsetter.

A. Yes.

Q. And the lane, 4500, that's simply the cost of the lane, right?

A. That's right.

Q. And we went through these items before. This is the other items of 2400, which you think was reasonable, for a total of $15,000. You have no real difference with that, except what you may have said before as to averaging, is that right?

A. No quarrel.

Q. And then you say the approximate useful life of the equipment is 15 years; depreciation of 15,000 over 15 years equal 1,000 per year, that's a statement of how we worked out depreciation. And then you come—by taking

the 15, dividing it by what we say is the life—and we come out with $1,000 a year. That's the—depreciation item. You have no quarrel with that?

A. No, sir.

[2735]

Q. Now, we get down here and we simply take the interest again, which I went through with you, and we come out with $320 a year, as we did on plaintiffs' Exhibit 1, and you have no difference with that?

A. No, sir.

Q. And then we have a total annual interest, $1,320 per year. That's money which the independent proprietor pays under his contract with Brunswick, is that right?

A. Yes.

Q. We have a heading, Brunswick BCOD Centers, which is our Exhibit 20, or our analog to your Exhibit 20, I should say. Depreciation $500 a year, do you quarrel with that?

A. No, sir.

Q. Indeed, that comes from Brunswick's own figures, doesn't it, that was applied to it?

A. Yes, sir.

[2736]

Q. And then an interest charged by Brunswick, zero per year.

That's where we have a quarrel, is that right, Mr. Barron?

A. We have a large difference of opinion.

Q. Large difference of opinion about zero per year. Nothing else on plaintiff's 1 or 1A; is that right?

A. No, sir.

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[2738]

Q. Is it a fact that any BCO center, Fair Lawn, Interstate or any other one, pays interest?

A. Our centers do not pay interest.

Q. So you see something wrong about our putting down zero when they don't pay interest?

A. I see plenty wrong with inferring that Brunswick had no interest.

Q. We never made any observations in plaintiffs' 1, did we, about Brunswick, the great company with surgical instruments and joint ventures with Nippon or any of those things, we made no observations about that, I am sure they paid interest, and I hope promptly on their debts.

Now, tell me about the management of one of those BCOD centers, Fair Lawn. Would the calculation of interest have anything to do with their running the centers?

A. No, sir, it would not.

Q. Would the way they handled the funds when it came in?

A. Calculation of interest would have no bearing on how the people that run the center actually perform.

[2739]

Q. They wouldn't know in the back of their head that they have got to take out of the 50 cents, or whatever it is for bowling so many pennies to pay over interest, would they?

A. That's not their responsibility, to worry about it.

Q. They don't know anything about it, do they?

A. No.

Q. How do you suppose they'd answer if I asked them the question, "Do you pay interest?"

A. If you asked them if they paid any interest on their center, or if Brunswick had any interest?

Q. No. If I asked them did they, did this center, did you, Mr. Fair Lawn, did you, Mr. Interstate, did you pay interest?

A. I told you they don't.

Q. Then how would they answer if I asked the question?

A. They would say that they didn't know anything about interest.

Q. Very good, sir.

And would you say that interest is not relevant to the management of a bowling center?

A. I would say that interest has nothing to do with

[2740]

how well a center manager performs, and that's the reason that Brunswick did not assess interest to individual centers.

That's the reason that Brunswick kept interest in the confines of its corporate treasury department, because it was the responsibility of the people in the treasury department to worry about interest.

Q. I'd like to read you from testimony given by you at a different time in answer to questions by me, not for a moment to suggest that there is any difference between that testimony and what you have just said, but to ask if you affirm what you said before.

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Q. "That being so, if you were preparing a

[2741]

chart from Brunswick's own statements, what item would you put down for interest?

"Answer: If I were preparing this chart, to compare this customer in this situation with Brunswick on a comparable basis, I would look to the profit and loss statements

of those two situations, and we do this from time to time and when we make our comparisons we eliminate these interest factors and we eliminate depreciation, and we try to measure operations on the basis of revenues and costs and expenses under one management or another. We feel that depreciation and interest expenses are not relevant to the management of the bowling center. The manager has no control over this type of expenditure."

Is there any difference, any reason—any difference you have today with what you said then, do you want to change any of that?

A. No.

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[2764]

Q. Remember I asked you, when I first began this examination, whether or not a tremendous amount of work was done in getting together the materials for defendant's Exhibit 20, a tremendous amount of research; do you remember I asked that question?

A. Yes, I remember it.

Q. Do you remember what your answer was?

A. Not exactly.

Q. What is your answer, if I put it to you now?

A. My answer is that when we went to prepare Exhibit 20 we examined the books of Brunswick to determine the long-term obligations which Brunswick had outstanding to its lenders; we categorized those long-term obligation as to those which related to bowling activities, bowling receivable financing, as to those which related to real estate loans, and other directly identifiable loans with other divisions, as to those that related to foreign activities.

Q. And you separated domestic bowling, was that your testimony?

A. We segregated the domestic bowling, yes.

Q. Now, sir——

A. Do you want me to finish?

Q. Have you more to say?

[2765]

A. Yes, sir; we did a great deal more work than that in preparation of Exhibit 20.

Q. All right.

A. We went to the books and we determined the amount of domestic bowling equipment notes receivable which we had on hand at the end of 1964. We prepared a calculation to show the ratio of outstanding bowling loans to those bowling receivables.

We went to the books and records again and we determined the amount of unpaid principal balance of receivables on those equipment contracts which were repossessed and which were turned over to BCO for operations in 1965.

Q. Is there any more you want to say, anything more?

A. Well, we did more work than what I said so far.

Q. Can you characterize it more generally? Go ahead, if you like

A. After we determined the amount of unpaid principal balances, we applied the ratio of bowling loans to bowling receivables to arrive at the amount of loans that would be allocable to the equipment taken over for operation of the BCO centers in 1965.

And that came to $24,435,000. We then calculated the amounts——

[2766]

Q. Are you repeating now what your whole testimony was of the last two days about this exhibit?

A. I am telling you what we did in the preparation of this exhibit; yes, sir.

Q. Can you find some general way to answer it, so that we don't have to hear it all again? Although I am content to have it, if you want. Is there some general way that would satisfy you, in answering your question?

Mr. McNeill: Your Honor, I object to this, if it is a question, as argumentative with the witness. Mr. Hoffmann asked a straightforward question—What work did you do in preparing this exhibit—and he hasn't permitted Mr. Barron to finish his answer.

The Court: Well, he has almost finished, if I remember his testimony. What else, Mr. Barron?

A. (continuing) We then determined the amount of payments that had been made on the total bowling loans. And we allocated a portion of those payments to the equipment taken over by BCO. That's what Exhibit 20 shows.

Q. All this was done so that you could have some comparison with this exhibit 1A and 1, is that

[2767]

right?

A. This was done to show that Brunswick had substantial amounts——

Q. Please answer my question.

A. This was done to——

Q. Please answer my question. Are you going to answer the question, which is: This was done so you could have a comparison with plaintiff's Exhibits 1 and 1A?

A. Yes.

Q. And so you could have an interest line for interest for BCO, is that right?

A. Not so that we could have one, so that we could show that we did have interest.

Q. Not in fact, surely; you don't propose that that is what it showed, do you?

A. We did indeed, in fact, have interest expense.

Q. In other words, that there is a basis in fact for Brunswick having interest here; is that what you tried to show?

A. There is, if we so chose to allocate it, to an individual center, yes, there is a basis.

Q. Do you remember being examined by me in 1970?

A. Yes, sir.

[2768]

Q. Can I ask you to listen clearly to a question I put to you, at page 1779 of the transcript. The question is:

> "Instead of zero, which is what we put down from your records, if you were to put some number down in place of zero, would not proper accounting technique have required you in some way to reflect the income which Brunswick received from the use of its money?"

To which you answered:

> "Well, first of all, as I explained earlier, we chose not to assess interest expense to the individual centers because it would be a tremendous amount of bookkeeping that would be involved and would involve myriads of transactions and computations and would really have no basis in fact and would not help us to measure the operating effectiveness of the bowling center."

How say you, Mr. Witness, do you repudiate that testimony now?

A. No, I don't repudiate that testimony.

Q. Did you not say then that such a computation would really have no basis in fact?

A. It would have no basis in measuring the effectiveness of a bowling center.

[2769]

Q. It would have no basis in fact, isn't that what you said, sir?

A. It all depends on what fact went before in your other questions.

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[2773]

Mr. Hoffmann: Let's see if I can read it all the way back.

[2774]

"Answer: The thing I fault you on, sir, is showing a factor for this Brunswick customer.

"Question: But it is zero, isn't that so?

"Answer: No. Brunswick's interest is not zero. Brunswick's interest is very high.

"Question: You just said, have you not, that Brunswick doesn't regard interest as relevant to the P & L statement of B. O. C. D. operated centers, isn't that your testimony?

"Answer: Yes.

"Question: You are talking about something else when you talk about Brunswick's interest. You are talking about the Brunswick Corporation as distinct from the B. C. O. D.

"Answer: B. O. C. D. is a part of the Brunswick Corporation.

"Question: Let's go into the matter of interest. Does Brunswick maintain accounts receivable?

"Answer: Yes, sir.

"Question: Do you know the volume?

"Answer: They have reached as high as four hundred millions of dollars in some of the past years. I have an annual report.

"Question: Do you know what they were in 1968?

"Answer: Not offhand. I can refer to an annual

[2775]

report.

"Question: Do you know whether they were small or lesser than the debt that was owed by Brunswick for its bowling operations in 1966?

"Answer: My question is that the receivables would be larger than the loans.

"Question: People pay interest on Brunswick's receivables, do they not?

"Answer: Yes, sir.

"Question: And so far as you know the rate of interest paid on Brunswick's receivables is at least as high as Brunswick pays for the use of money itself, isn't that correct?

"Answer: In some cases. In some cases our interest expense was higher than what our customers were paying.

"Question: In some instances it was lower?

"Answer: Yes, that is correct.

"Question: It is a large corporation, is it not?

"Answer: Yes.

"Question: And it is reasonable to suppose that a large corporation can get a prime interest rate or something close to it from a bank, isn't that so?

"Answer: In some cases. In some cases they are not. We cannot.

[2776]

"Question: You have better bargaining strength, don't you, than a small corporation might have in the bowling industry?

"Answer: When we borrowed from C. I. T. Corporation we borrowed at a higher rate. We paid ten and a half and eleven per cent interest in 1967.

"Question: Suppose for the sake of your testimony that one were to conceive that the interest paid out by Brunswick to banks was as large as the interest which Brunswick extracted from its debtors, would you be satisfied with that for the purpose of talking about interest?

"Answer: They are very close, sir. Very close.

"Question: Now, if the accounts receivable outstanding are higher than the Brunswick debts to the bank, other things being equal, can it be supposed that Brunswick makes more money from collecting income interest, that is to say, interest paid it by its debtors than it puts out in interest which it pays to the bank?"

And here there is some objection from Mr. McNeill. And the Court says, "Let him finish." And finally:

"The Court: Objection overruled. Read the question to the witness."

The question was read. And the answer was:

"I previously said that these figures were very

[2777]

close, at least in the past few years.

"Question: Well, it would follow, then, would it not, because of the fact that outstanding accounts receivable were larger than the bank loans?

"Answer: There are two things that were not considered. One is that not all our receivables bear interest and, No. 2, we try in our financing policies to realize the going rates of money. We try to make sure that we collect enough interest to cover our interest expense.

"Question: You mean that this would put your receivables, your receipts that you receive perhaps at even a higher rate than what you paid out to the banks, is that the point of your remarks, because you made adjustments for fluctuation of the dollar rate?

"Answer: Sure. We have to collect our profit and we have to pay our bills, and a few other things.

"Question: So, tell me, sir, would it be a good accounting technique if there be interest charged against a B. C. O. D. center to charge such interest without reflecting also some return of Brunswick's receivables for the use of money on debts owing to it? Would that have been good accounting practice?

"Answer: If we were to relate the interest income to the centers we operated?

[2778]

"Question: If you were to put down an expense item first for interest.

"Answer: Yes.

"Instead of zero, which is what we put down from your records, if you were to put some number down in place of zero, would not proper accounting technique have required you in some way to reflect the income which Brunswick received from the use of its money?"

And this is the question I asked you about. And this is the context in which the question was put to you, sir.

Do you see anything in that context which would cause you to explain away your answer in terms differently than used in 1970?

A. As I have said, the interest factor was not charged to the bowling centers, because, in our opinion, the interest had no measure on the effectiveness of that operation.

Q. And are you repudiating now your statement that it was not charged also because it would really have no basis in fact?

A. It would have no business reason to do so.

Q. The words I asked you about are: It would really have no basis in fact.

A. And I am saying—define "in fact" as the

[2779]

effectiveness of measuring the operation of the centers. That's the fact I am talking about.

Q. You didn't do it in 1970, did you?

A. Beg your pardon?

Q. You didn't so define it in 1970, did you?

A. All through the 1970 conversations we talked about the effectiveness of the centers.

Q. I just read you the questions and answers for several pages.

A. I did not say it in that specific instance, no, but I said it all throughout it, throughout the other questions and answers.

Q. Indeed, when you came to effectiveness of operation of the bowling center, you separated that part of your answer from the previous one, did you not, because what you said was, "Well, first of all, as I explained earlier, we chose not to assess interest expense to the individual centers because it would be a tremendous amount of book-

keeping that would be involved and would involve myriads of transactions and computations and would really have no basis in fact and would not help us to measure the operating effectiveness of the bowling center."

Those were separate ideas, were they not, in 1970?

A. You are taking the words to make them separate

[2780]

and I am telling you that in my mind they are not separate.

Q. Well, sir, to the extent that you testified as I have just read to you, and to the extent that your answer says it would really have no basis in fact, I ask you, was there any regular accounting kept in the Brunswick organization which showed the items of principal and interest which is found on defendant's Exhibit No. 20?

A. There were books and records kept which showed the interest expense on the loans that are included in Exhibit 20, yes, there were.

Q. When you say the loans that are included, you are referring again to big Brunswick, aren't you, the overall loans? Let me come at it this way, Mr. Barron.

I would like, please, to have yes or no answers to my questions. Was there any record that Brunswick kept or maintained that showed a loan outstanding against Fair Lanes?

A. No, sir.

Q. Was there any record of expense Brunswick kept or maintained that showed a loan outstanding against Interstate Lanes?

A. No.

[2781]

Q. Was there any record which Brunswick kept or maintained which showed loans outstanding for Ten Pins on the Mall?

A. No.

Q. Was there any record kept or maintained by Brunswick which showed loans outstanding for Lodi?

A. No.

Q. Was there any record kept or maintained by Brunswick which showed loans outstanding for the some 160 centers which are reported on Exhibit No. 46 in evidence? I will show it to you.

A. We did not maintain individual loan records on bowling centers.

Q. Was there any book or record of the Brunswick company which showed any principal or interest which had to be paid by any one of these 160 centers?

A. The interest was paid by Brunswick Corporation. It was Brunswick——

Q. Yes or no, please. Would you kindly answer that yes or no?

The Witness: Would you repeat the question?

The Court: Mr. Bremer, repeat it, please.

(Question read as follows:

"Was there any book or record of the Brunswick company which showed any principal or interest

[2782]

which had to be paid by any one of these 160 centers?")

A. No.

Q. If you were to make such charges for any one of those centers—that is to say, any one of the 160, including Lodi, Ten Pins on the Mall, Interstate Lanes, Fair Lawn, any of the others—would not proper accounting technique have required you to keep and maintain records showing principal and interest during the years, the life of these various bowling centers?

The Witness: Repeat the first part, please.

The Court: Mr. Bremer, repeat it, please.

(The pending question was read.)

A. I don't understand the kind of charts you are talking about.

Q. Charges for principal and interest.

A. Do you say charts or charges?

The Court: Charges.

Q. Charges, c-h-a-r-g-e-s.

A. If I were to assess interest charges to specific houses, yes, I would have to set up a separate ledger for each house.

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[2785]

RE-DIRECT EXAMINATION.

Mr. McNeill: Your Honor, prior to asking this witness additional questions, the Brunswick annual report for 1965 has been referred to several times during the testimony of this witness, and I'd like to, for the record, have a copy marked as Brunswick Exhibit 30 for identification, and offer it into evidence.

The Court: Let's skip the identification. Any objection, Mr. Hoffmann?

Mr. Hoffmann: No objection.

The Court: Into evidence, no identification, skip the identification marking.

(Exhibit D-30 received and marked in evidence.)

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[2787]

Q. Looking at the top line once again of Exhibit 20, the 243 million some odd thousand dollar figure——

A. Yes.

Q. —do those numbers come from Brunswick's books and records?

A. Yes, they do.

Q. And that's only a portion of the outstanding loans that Brunswick had as of December 31, 1964?

A. That's right.

[2788]

Q. Only those which relate to domestic bowling receivables.

A. Yes.

Q. And the second line, the $364 million figure, does that come from any calculations you made or did that come from the Brunswick books and records?

A. This came from the Brunswick books and records?

Q. And is that the aggregate amount of domestic bowling receivables as of December 31, 1964?

A. This is the total principal amount of all bowling equipment notes receivable.

Q. And if John Jones, or whoever, in Peoria, had bought the Brunswick equipment in 1960, and had paid his $150,000, plus $50,000, and still owed Brunswick $200,000, the $200,000 would be included in that domestic bowling equipment receivables as of December 31, 1964?

A. Yes, sir.

Q. And the next line, the 66.9 per cent, is that figure more than a mathematical computation dividing the second figure by the first figure?

A. Dividing the first figure by the second.

Q. Thank you.

The next amount, the thirty-six million some-odd thousand dollars, where do those figures come from,

[2789]

something you computed, or calculated, or imagined?

A. Those came from an analysis of the accounts that were repossessed in 1965 and turned over to BCO for operation. And this is the sum of the individual principal amounts owed by each of those accounts prior to the repossession and takeover by BCO.

Q. So if John Jones, who put his center in in 1960 in Peoria, failed to pay the $200,000 he owed to Brunswick, and was repossessed by Brunswick in 1965, and Brunswick BCO commenced operating that center in Peoria, then that $200,000 of unpaid principal balance for John Jones would be included in the $36 million figure?

A. Yes, sir.

Q. Now, what if John Jones had put his center in in 1960, failed to pay his bills, Brunswick did repossess his equipment in 1965, but took the equipment out and put it in a warehouse, or did something else with it, but didn't operate it, would that be included in the $36 million figure?

A. No, sir; it would not.

Q. And what if Brunswick took that equipment out of the warehouse and resold it to anyone, for either a large amount of money or a small amount of money, would that somehow get itself back into this $36 million

[2790]

figure?

A. No, sir; the $36 million is only the amounts owed by those customers whose accounts were repossessed in 1965 and the centers which BCO commenced operating.

Q. And does that $36 million figure represent Brunswick's investment in those centers which it commenced operating in 1965?

A. That is the value of those assets on the books of Brunswick prior to the repossession.

Q. And the last figure, the $24 million figure, is that anything more than applying the 66.9 per cent ratio to that $36 million unpaid balance figure?

A. No, sir; that is exactly what it is.

Q. Now, what about those figures at the bottom, showing an amount of principal, interest, and a total amount paid each year, 1965 through 1975, what was the basis for that calculation?

A. The basis of this was an analysis of the payments on the bowling equipment related loans, the total amount of principal and interest paid each year, and dividing—apportioning that total loan down to the $24 million, and then dividing that portion by the 3,615 lanes.

Q. You didn't throw any more new loans in there, in addition to the 24 million?

[2791]

A. No, sir; we did not.

Q. And the reason for the different principal payment amounts each year, why is that, does that have something to do with the terms of Brunswick's bank loans and other loans?

A. That is correct, that was because of the way the payments had to be made.

Q. And is it your testimony, Mr. Barron, that during these years, 1965 right up to the present day, Brunswick Corporation has, indeed, made these payments on principal and interest in connection with the loans that are included in the top figure?

A. Yes, it is.

Q. And the projections for '73, '74 and '75 are projections based upon the still outstanding loans, and the terms of those loans for repayment?

A. Yes, sir.

Mr. McNeill: That is the end of my redirect, your Honor.

The Court: Re-cross-examination.

RE-CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. Brunswick, Mr. Barron, paid or didn't pay, as it pleased, didn't it, when it came to paying off on loans; decided which loans to pay and which loans

[2792]

not to pay, did it not?

A. Brunswick paid its obligations in accordance with the terms of those agreements. We did not ever choose to not pay.

Q. Brunswick took whatever monies it received and spent them as it pleased, did they not, without regard to any particular bowling center coming into existence in 1965, isn't that true?

A. Are you talking of loans that were—

Q. No, monies that Brunswick had, it spent them as they pleased, without reference to any bowling center existing in 1965?

A. Yes.

Q. That's true, is it not? And indeed all these debts referred to on this Exhibit 20 are debts which were incurred prior to the creation of the BCOD bowling operated centers, isn't that true?

A. These are debts which——

Q. Please, is it true?

A. Yes.

* * *

[2793]

MILTON RUDO, called as a witness on behalf of the Defendant, being duly sworn, testified as follows:

The Court: Please speak loudly so that the jury can hear you.

Now, Mr. McNeill.

DIRECT EXAMINATION.

By Mr. McNeill:

Q. Where do you live, Mr. Rudo?

A. I live in Highland Park, Illinois.

Q. Is that near Chicago?

A. It is a suburb of Chicago; yes, sir.

Q. And by whom are you now employed?

A. I am employed by the Brunswick Corporation.

Q. And in what capacity?

A. Right now I am president of the Brunswick Division, which was formerly known as the Bowling Division.

Q. How long have you been employed by Brunswick?

A. I came to work for Brunswick in June of 1940.

Q. Will you tell the jury briefly where you were born, where you grew up, where you went to school, before joining Brunswick in 1940?

A. I was born in Baltimore, Maryland, lived there all my life. I went to school in Baltimore, in both high

[2794]

school and college. I went to Johns Hopkins University in Baltimore.

[2795]

Q. And did you finish Johns Hopkins in 1940?

A. Yes. I was graduated in June 1940 and went to work for Brunswick immediately upon graduation.

Q. Now, Mr. Rudo, could you indicate in what capacity you were first employed by Brunswick and trace your various positions until military service?

A. I was a salesman, sales trainee, in 1940, in Pittsburgh, where I worked for about six or seven months.

And then I was transferred to Baltimore, Maryland—oh, in March of 1941. My Dad had had a stroke and he was with Brunswick and I went there to work with him until January 1942, when I was inducted into the Army.

Q. Now, you say you were in the sales end of things for Brunswick.

Selling what products?

A. I was selling bowling and billiard products in 1940 and 1941.

Q. And how long were you with your—was your tenure with the military?

A. I went in in January 1942 and I was inducted as an enlisted man, until January 1943 when I became an officer, and I left military service officially in November 1945.

[2796]

Q. Did you serve in any of the theatres of the war?

A. In two overseas theatres, one was in the Caribbean early in the war, and then I served in the European Theatre.

Q. What was the circumstances of your discharge from the service?

A. Honorable.

Q. What rank?

A. I was a captain.

The Court: Did you say dishonorable?

The Witness: No, honorable, and I was a captain.

Q. What did you do after getting out of the military?

A. Came back to work for Brunswick as a salesman in the New York branch, which covered North Jersey, part of Connecticut, part of—up to New York State, and all of the five boroughs and Long Island.

Q. And how long did you hold that position?

A. I worked in New York—well, from when—when I got out of service, I took the territory in January 1946. I spent a couple of months reacclimating, and my territories as a salesman included Westchester, Dutchess County, Putnam County, Rockland County and

[2797]

the two counties from the New York border up, Greenwich up through New Haven.

I don't remember the names of those counties.

Q. Can you trace briefly your next position with Brunswick?

A. I was transferred and promoted to be a branch manager in Pittsburgh at the end of 1947, where I served until 1950.

While I was in Pittsburgh, I was in charge of all sales and distribution and administration in the Western Pennsylvania area.

Q. What products, what Brunswick products?

A. All bowling and billiard products.

Q. What happened after that?

A. I came into the home office of our corporation in 1950 as the billiard merchandise manager, and my duties there were to develop the line of billiard equipment and have promotional and merchandising ideas on how to sell that equipment and supplies.

And then in 1951 I was made sales manager of the defense products division.

Q. What was your next position with Brunswick?

A. After that I became merchandise manager for bowling, because the merchandise manager for bowling had died in 1952 or 3, and I held that position until 1955

[2798]

when I was transferred back east and set up headquarters in Harrisburg, Pennsylvania, where we had recently started then an organization of regional managers, and I was the eastern regional manager and was given a divisional vice-presidency at that time.

My responsibility there was to sell all billiard and bowling equipment in the East Coast. I had seven or eight branches that reported to me from Florida up to New England and as far west as the western borders of Pennsylvania.

Q. Now, was this prior to the time that Brunswick's automatic pinsetter was available commercially?

A. Yes.

Q. Now, what was your position after this job?

A. I stayed in this job until 1958. In 1958 I went into the home office as sales manager on a national basis. I remained in that position for about four months when I was given the title of general sales manager. I can't tell you the difference. My responsibilities were the same.

The Court: How about your salary, was that increased?

The Witness: Thank God, yes.

Q. This was in Chicago?

[2799]

A. Yes. I was transferred back to Chicago.

Q. How long did you serve as general sales manager?

A. I served in that job until 1960 when I became vice-president of marketing, and I was in that job until October 1962 when I was made president of the Bowling Division and a vice-president of Brunswick Corporation at that time.

Q. Now, this is prior to any BCO; is that right?

A. Yes.

Q. Now, trace your employment from 1962 forward.

A. I was head of the—president of the Bowling Division until I guess, August of 1964, when I took a leave of absence and went to the—it was not really a leave of absence, I left the day-to-day activities, I was still on the payroll, I went to Harvard for 13 weeks to attend the advanced management program at Harvard.

I was there from about the first week in September to about the middle of December 1964.

I was not in any activities of the company. I was still on the payroll in that period of time.

Q. What happened after that?

A. When I returned from Harvard in January 1965, I was made president of the BCO Division, and I stayed on

[2800]

as head of BCO until 1967.

And in 1967 I was given the additional responsibilities of BCO sales, marketing, service and engineering of all bowling, billiard products.

And in 1969 I was given the additional responsibility of the manufacture of all bowling and billiard products and have stayed on as president of the combined divisions, and I am in that job right now.

Q. Was there a name change in this combined division recently?

A. As of January 1, 1973, we changed the name of the Bowling Division to the Brunswick Division, and that was done because we have other products besides bowling and billiards, and as a corporate philosophy——

The Court: Corporate what?

The Witness: Philosophy, we decided that each division had to have its own marketing trade mark.

Mercury Marine, which is part of Brunswick, really is known as Mercury, and Brunswick as such as a name is really known in the bowling and billiard business. That's why our company changed really to BCO, figuring that each division would capitalize on its own trade mark and its own copyright, we, taking the B, which was formerly a

[2801]

Brunswick—designation, and basically——

The Court: How many titles have you had since 1947?

The Witness: I never counted them, your Honor, but I have had a lot of them. I would guess they range about 10.

The Court: More than that.

Q. Mr. Rudo, with respect to BCO operations of bowling centers, you indicated that you were made head of the division effectively in January 1965. Have you had responsibilities for that operation as the head of that division through these enlargements of the division and through the name change up through today?

A. Yes. BCO is still part of my responsibility. And it is under my supervision.

Q. Now, going back for a moment to the bowling center business prior to the War, this is the time when you first joined Brunswick and you said you were a sales trainee?

What was the bowling center business physically and operatively in the United States before World War II?

A. The bowling business was just really, if I could use a colloquialism, coming out of the saloon days. This was the beginning——

[2802]

The Court: That's the first time the jury sat up in the last four weeks, when you said saloon. You have got me sitting up straight, too.

The Witness: Must have some meaning to them.

This was the beginning of investors building buildings for bowling centers, decor in bowling centers changed, and it became—this was the start of really the bowling recreation center.

Q. Was this prior to automatic pinsetters?

A. Yes. It started in about 1937, 1938, is when it really started, and it continued to the War.

The War, of course, stopped any building, and our company did 90 percent of its business as a defense contractor in World War II.

After the War, our company felt that it would do well, because there were more lanes sold in 1941, as I recall, than any year thereafter, until about 1959, so 1941 was a very big bowling lane year.

After the War, because of the lack of housing in the United States and people coming home from the War, our sales were very restricted in the bowling and billiard end of our business.

[2803]

After about 1950 there was some rebuild—some start of bowling, but the Korean War slowed that down.

Q. When was the introduction of the automatic pinsetting device?

A. Actually, AMF introduced an automatic pinspotter for lease in 1946, and they actually went out and took contracts.

But because of the cost of pinboy, they really couldn't deliver or didn't deliver because their cost of machine was too high, and their actual first deliveries, that was in 52—53 or 4.

Q. You mean the commercial—

A. The commercial operators.

Q. When did Brunswick enter the market with its automatic pinsetting device?

A. Our first automatic pinsetter was introduced in 1956 in Roselle, New Jersey.

Q. Is that anywhere Newark, New Jersey?

A. It is very close to Newark, New Jersey, yes.

Q. In 1956?

A. Yes.

Q. How many AMF pin—automatic pinsetters or pinspotters were installed in commercial centers before Brunswick installed it first?

A. Approximately 20,000 AMF pinspotters were in the

[2804]

market prior to our introduction.

Q. Looking at the year 1956 when Brunswick introduced its automatic pinsetter, would you describe the market for those devices as coming from the people who were already operating bowling centers, or people who were interested in putting in new centers?

A. Well, the big part of the business in 1955 and 1956 was to existing bowling proprietors. As I remember, there were about 60 to 65,000 lanes in existence at that time, tenpin lanes, and the market, when we first introduced it, was to the existing bowling proprietor. He had a problem because the only people he could get to set pins were those people who were either school children or people off the—I don't know what the section of Newark would be, but in Chicago it was Madison Street and in New York it was the Bowery; in other words, these were not people who had steady jobs.

The fact that they did not have someone available all of the time made it difficult and the pinspotters and the pinsetter, when it was introduced, of course, made it available, made their place more viable because they could get business almost at any time.

But up to about 1958 or 1959, there had been a tremendous upsurge of new investors going into the business, people who either were already in and were

[2805]

making lots of money or people who—and they were going on and putting up new bowling centers, or just new investors, because this was a cash business and they could see the profits that were being made at the local bowling center.

Q. Did the number of pinsetters being sold at the late 50's continue to increase each year?

A. Oh, yes, very much so.

Q. Is that just true with respect to Brunswick and its automatic pinsetters, or also AMF?

A. Also AMF, both companies grew tremendously, both companies had very bitter competition. It was very intense, to get both the existing proprietors business and/or the new bowling centers.

Q. To the best of your knowledge by 1961 about how many—what was the share of the market that Brunswick had sold with respect to new automatic pinsetter equipment?

A. By the end of 1961 it was approximately the same; in other words, both of us had about the same amount of pinsetters, pinspotters, in the market.

Q. You mean Brunswick and AMF?

A. Yes.

Q. Were there any other manufacturers——

A. After 1961, there was another, Bowl-More, who had

[2806]

been in the duckpin and candlepin business in New England, had made an automatic pinsetter for that game, which was sold basically in Canada, New England and in the Baltimore, Washington area, came into the tenpin business and introduced on separate occasions two different tenpin, automatic tenpin machines, tenpin setting machines.

[2807]

Q. Before Brunswick introduced its automatic pinsetting equipment what were the down payment terms required by Brunswick in the sale of its not automatic or semi-automatic equipment?

A. Our terms prior to the introduction of the automatic pinsetter was 35 per cent down in major metropolitan areas, and 45 per cent down, as I recall it, in cities of population of under 100,000.

Q. Did that practice change when the automatic pinsetters were introduced?

A. Yes, sir.

Q. By the way, what was the respective cost or price difference in the marketplace for the pre-automatic equipment and the automatic equipment that was introduced in 1956, approximately?

A. From the lane point of view it was not too much difference. The lanes cost anywhere between 45 and 55 hundred dollars apiece depending on the selling price, depending on what a proprietor wanted.

That remained the same. But if a proprietor bought his machines from Brunswick, at the beginning our price was $7700, and then it went to $8100, and then it later dropped back to 77, so his increase was in total sales price, was 81 plus the 4500 or 5000.

Q. You mean the non-automatic equipment cost

[2808]

$7700?

A. No, non-automatic cost 45 to 55. Are you talking about just the pinsetting device?

Q. Yes.

A. I'm sorry. The pinsetting device alone, which was what we called then a B-10, was a semi-automatic device. You're talking about before the automatic pinsetters. That sold for about $650.

But that needed a pin boy to pick the pins up and put them in the tray.

Q. And then the automatic equipment pinsetter was sold for $7700, $8100, in that area?

A. Except AMF at that time was leasing their pinspotter.

Q. Now, what down payment was required by Brunswick for this automatic pinspotter, pinsetter?

A. $500 down payment.

Q. On the $8100 machine?

A. Yes. And that was done so that we could compete with the lease machine.

A bowling proprietor had—had to have a choice. AMF's terms were $500 down, and then they had a 12-year lease in the beginning in which a man paid 12 cents a game which all went to AMF.

In our set-up in order to compete we felt that

[2809]

if we sold a man a machine with the same down payment, gave him eight years to pay, that this worked out with interest exactly the same as a lease, and that means that if he was doing 12,000 games at 50 cents a game he could have paid for these pinsetters with all of the interest charges and everything else in eight years, the lanes would have been paid for in five years, whereas with the AMF rent he would still have to pay rent after the eight years.

So we wanted to be competitive, and the way we could get into this business to be competitive was to have our sale of pinsetters at $500 down, so that we could compete and get the business.

And by introducing in 1956 our pinsetter with 20,000 ahead of us, we about caught up because we had a good machine and we had a good economic situation for the prospective investor, so we got a good bit of the business from 1956 to 1961.

Q. Was there any change in the industry generally in the types of proprietors who were in the business after automatic pinsetting equipment became so popular, was it still the—

A. No, sir, it changed materiality. Instead of having an individual proprietor operating maybe one bowling center in a given area, it changed in 1959

[2810]

and 1960 particularly to chains. They grew—I guess it started maybe in 1958. They grew out of the fact that this was a cash business. Many of them went to the public and sold stock, so that they could finance.

And these people were buying large numbers of bowling centers, five at a time, ten at a time.

It changed the whole complex of the selling and merchandising. In fact, I made a study in 1961 that indicated that 70 per cent of what we were selling in 1961 went to the chain operators who were expanding.

These were people who had come into the business approximately in 1958, 1959, and they were doing most of the expansion in 1961.

[2811]

Q. Now, Mr. Rudo, would you say that the popularity of bowling continued at a high level during the 1950's?

A. I'm sorry, I didn't hear your question.

Mr. McNeill: Mr. Bremer, would you please read the question?

(Question read.)

A. Oh, yes, sir; it grew very much, with women becoming a very important part of the bowling participants, and children, many high school leagues and high school people entered the bowling lanes. The business changed materially and grew materially, by participation and by investors.

Q. Up to 1960, carrying you through the 1950's, what was Brunswick's experience with respect to its bad debt losses resulting from the sale of bowling equipment on an installment basis?

A. Up until 1960?

Q. Yes.

A. It was a half of 1 per cent—that was our losses—which were very minimal, practically nothing.

Q. And the investors were——

A. Were paying their bills and paid them off, up until 1960.

[2812]

Q. How long after 1960 did the sale of pinsetters, as far as Brunswick was concerned, increase?

A. Well, they continued to increase through the year 1961. And after 1961 the sale of new pinsetters declined.

Q. Did it just level off or——

A. Oh, no, it went down very badly. In fact, up until '71——

Q. '71?

A. '71. Well, '62 was not too bad a year. We dropped better than 50 per cent in '62, as I recall, in sales, and even more in '63. I don't remember all the exact figures. But from about '64 through '71 we manufactured practically no new pinsetters. It may have been about a hundred 150 a year. And these were primarily to the military and some colleges.

But after a while we got the military and the colleges to take used equipment.

Q. Mr. Rudo, I show you what is in evidence and has been marked as Defendant's Exhibit 2. The light blue line indicates sales of new pinsetters. Does that line accord with your recollection generally of what happened as you have just described it?

A. Mr. McNeill, if you move a little closer I can see the numbers better. I can't see them from here.

[2813]

(Mr. McNeill moves closer to the witness.)

A. (Continuing.) Oh, yes, that's the record.

Q. What does that show in 1961?

A. We sold and shipped 16,288 pinsetters, domestically.

Q. How about 1963?

A. 1963, 2900.

Q. What about the sales of new automatic pinsetters since 1965?

A. As I said, we practically sold none. The only ones that we did sell was to the military, really. And they insisted on new equipment. About 1967—well, I know after I took over the sales and marketing of our equipment, there were some—almost 5,000 pinsetters in inventory and part of my job was to move those. These were in warehouses, that had been repossessed.

I got our military sales people to go to Washington and tell them that these used machines could do the job, and they could save money. But it took us about two years before we really got the military to start buying reconditioned pinsetters. Up to that point they would only take new.

Q. Mr. Rudo, after 1961, what happened with respect to proprietors who had bought equipment from

[2814]

Brunswick, about paying their bills?

A. Well, many of us who had lived in the prior years, where losses were nil, in '62 and '63 and '4, it became quite a nightmare. We couldn't conceive of what happened. Literally people stopped paying, couldn't afford to pay, and we were getting many requests from our customers to rewrite their contracts.

Q. What was Brunswick's policy during those years with respect to proprietors who said that they had trouble

making payments to Brunswick and who wanted extensions of their contracts?

A. Usually in the early years our credit people, who had this prime responsibility, would visit these bowling centers, analyze the situation, and in almost all cases, every time they could, they granted extensions.

In other words, if a man had an original signed contract for five years to pay off his bowling lane contract, because in the early years we had two separate contracts, in many cases they were extended out to eight years, which then made his payments, on a per month basis, and a per year basis, much less.

And then in some cases, later on, they were extended out as long as ten years, both the pinspotter—I mean the pinsetter, and the lane contracts, some were

[2815]

extended out as long as ten and twelve years.

Q. Now, is the net effect of an extension agreement to the purchaser that he has to pay less dollars each month, or each year, but over a longer period of time?

A. That is correct. That was the reason it was done.

In other words, where he would have had a thousand dollars hypothetically to pay per month, which would have paid part of his pinsetter contract and part of his lane contract, in many of the extensions it reduced it as low as $600, so that this might make it easier.

Q. Were there situations where Brunswick did not grant an extension of a contract when a proprietor was not paying his bills?

A. I know of none.

Q. What about the second time he came in for an extension?

A. Well, after it became hopeless—we had some cases, after extensions were made, where people just walked away

from the bowling centers, and left the equipment, and everything else, there, because, as this industry expanded many of these people who went into the business, and as the competition became bitter, they formed what we called shell corporations. These corporations really had no assets. And, unfortunately, both Brunswick and AMF would sell these corporations.

[2816]

So if the man wasn't doing business—and in some cases he just walked away from the bowling establishment, and left the equipment, and the only place Brunswick, or AMF, or any other creditor could go would be to that corporation, which really had no assets at all. It never paid for its equipment or anything else.

Q. What did Brunswick do about the 40 pinsetters sitting in the establishment?

A. Or the lanes. What we did was try to sell them. And in many cases—in '62 it started, but '63 and '4, the price deteriorated. As I recall, our average balance as of '64 being owed per lane and pinsetter was over $10,000. But in '63 and '4 in some cases we sold bowling equipment as low as five and six thousand dollars. We tried to lease some. In many cases we also—in '62 and '3, particularly '3—hired many people as promotion men. And we sent them out in the field to work with these bowling proprietors who could not make payments. At one point in time we had 28 promotion men on our payroll who were out in the field working in bowling centers to help bowling proprietors promote their business, by getting leagues, showing them how to run tournaments, showing them how to operate their business.

We were trying to get those proprietors who had

[2817]

purchased equipment to pay their debts. We did not want the equipment.

Q. Did Brunswick repossess any of its equipment in the instances when the proprietor did not pay his bills?

A. Only when it became absolutely hopeless, that we could not collect.

Q. Did it occur?

A. Oh, sure. We started to repossess equipment in '62, and it picked up in '63. And it was very great—became an avalanche in '64. There was more equipment than we knew what to do with.

Q. And was it this repossessed equipment that you mentioned earlier you were trying to sell, or realize some——

A. Yes, sir; we were trying to sell this repossessed equipment. In fact, equipment was coming back so fast, it was two to one. In other words, for every one we sold we had two others we had to pull out.

And when we had to pull equipment out, it cost us $800 each time.

Q. $800 per what?

A. Per lane. This was taking the machinery out of the bowling center, carting it away, putting it in a warehouse, and storing it, and then if we ever——

[2818]

getting it right there, so that some day we could resell it.

Q. What was the market in 1963 and '4 for selling this used equipment that you had in the warehouses?

A. As I told you, for every one we sold, at prices as low as better than 50 per cent off of what was on our books as a receivable—for every one we sold we got two back.

The people just couldn't pay, wouldn't pay, and in some cases walked away from it.

Q. Mr. Rudo, does the green line on Defendant's Exhibit 2, indicating repossessions, comport with your recollection of Brunswick's experience in repossessing pinsetters?

A. Oh, yes, sir.

Q. And what does that show with respect to when those repossessions occurred?

A. We repossessed 300 in 1961; 1462 in '62; 3,354 in 1963; 4,592 in 1964; 5,996 in '65; 3,658 in 1966; and in 1967, 1,688; and we continue on out until 1972, where we still repossessed 50.

Q. Mr. Rudo, can you be more specific about the prices and terms that Brunswick tried to obtain for its used repossessed equipment in 1963 and 1964?

Mr. Hoffmann: I object to the form of the

[2819]

question.

The Court: No, overruled.

Answer it.

A. As I recall, we were really following two policies in 1962, '3 and '4. One was to sell them—and, as I said to you, our receivables balance was running somewhere between ten-five and eleven thousand on each lane, and we tried as low as five and six thousand dollars as a selling price. Our down payments on this used equipment, we tried to get as much as 10 per cent, if we could. And we always wanted to get some down payments. It was not easy. In many cases we couldn't even get that. And in those cases it became so difficult we decided to try what we called interim leasing.

And we said to people in '62, '3 and '4: This bowling center has gone bad. We have had to repossess the equipment. The original customer could not pay us, wouldn't pay us. Take it over. We will get it to you on an interim lease. See if you can build it up. See if you can make it a viable business.

And we gave them, at the beginning, a one-year lease. And in some cases we gave them a second year. It was our main hope to keep this equipment in the field and hope that these people would pay us, and some money would be coming in to us.

[2820]

Q. Did some of these deals work out?

A. Yes, sir. Most of them did not, because the business had gotten so bad and they could not pay.

Q. Now, did the prices that Brunswick was offering its used equipment for, and the availability of these interim leases you have just described, have any effect upon the fellow who up to that point in time was paying his bills regularly for equipment he had purchased at $12,000 a lane?

A. It was one of my most amazing experiences, because I never realized it, in my own training, that people stopped paying who could afford to pay. And they were concerned that Joe Smith was not paying. And what were we going to do about it?

And in '63 and '4 it became quite a problem, because it was difficult then to find who really was not doing the business and who was just not paying. And it became quite a problem. And our financial people became quite concerned and got very rigid. Up to this time they were very much easier to work with.

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[2821]

Q. Now, Mr. Rudo, did anything else other than what you have already mentioned happen in the early 1960's, late '50's, with respect to the down payment on equipment being sold by Brunswick?

A. Well, as I indicated to you, as these changes came into being, they were forming, as were other people, forming shell corporations and buying equipment, but the master corporation was the purchasing agent usually, and they were buying, as I said earlier, five to ten establishments.

What they were playing, because of the competitive factors between AMF and Brunswick, one company against the next. They would indicate that, "I can get a 15 per cent down payment on lanes from AMF, if you don't match it you won't get the business," and this was—it is easy to look back at it now, but in 1959, 1960, 1961 and 1962 this was the pressure, "I will buy ten centers from you if I can get 5 per cent, 10 per cent down."

In some cases—we were approached on one occasion by Mr. Dankoff, he'd buy five centers from us, and he was strictly an AMF customer, if we would have sold it to him for nothing down. This was the kind of pressures being put on us.

Our 35 per cent on lanes deteriorated in the

[2822]

1959, 1960, 1961 period to where it got down to as low as 20 and 10 per cent to some customers down on the lanes. We stayed pretty rigid with the $500 down on the pinsetters.

There were usually two contracts, the pinsetter and the lane.

And then later, I think after 1962 or '3, we combined them.

But the down payment aspects declined very badly.

Q. Now, Mr. Rudo, what does a lane, as it's been used in your testimony, mean; is that just the series of wooden boards that are laid down on an alley that you roll the ball down, or is it more than that?

A. No, it is more than that. A bowling lane as we conceive of it, conceived of it then, and mostly today, was the lane and all its accessory equipment equipment, like the kickbacks and the gutters, settee.

Q. Let's take these one at a time.

What is a kickback?

A. Well, a kickback is——

The Court: Well, would you call that the return?

The Witness: No. That's the back end of the pit where the pinsetter fits on the kickback, but the pins bounce off the kickback. They hit,

[2823]

and they splatter, they hit the side boards, they are really the side boards of the back end of the bowling center that pin boys would have used to sit on then.

Q. And you said gutters——

A. They are the gutters that go down along after the foul line, there is a 42-inch bed of lumber, and the gutters, as I recall, are about nine inches, and this is if you don't stay on the surface the ball goes off and you don't knock any pins down.

The Court: That's what you stay out of, right?

The Witness: In many ways, yes.

The Court: Literally.

Q. That's the back end of the pit that kicks the ball and the pins back, and the gutters on the sides of the wooden alley.

Is there more to it than that?

A. There is much more than that. It includes, as we designate it, includes the masking units. The masking unit really is a decorative piece of equipment that meets the ceiling, usually, if it were curved or square, and it basically hides the pinsetters. It before would hide the pin boy, and today it hides the pinsetter.

[2824]

Q. From the bowler?

A. Yes. The only thing really the bowler sees is when the pinsetter comes down to set pins or rake them off, so this is decorative, but it is part of the bowling center.

It functions, in some cases it has pin indicating devices on it as to what is left, and in some cases it shows how to make these various spares that might be left. That has a function, and that's usually part of a bowling center package.

When we talk of 4500 to 5000, this is included in it. Also in the front end—this price of 4500 in what I am describing does not include the pinsetter. The pinsetter is a separate item itself.

The lane includes, package, as we call it, includes the settee in the front end in which the bowlers sit on. It includes scoring equipment, either score tables or telescores, where you write the score and it flashes on a screen out in front, and now more recently in the last couple of years the automatic scorer—when I talk of $4500 or $5000, automatic scorers were not in existence in those days.

It includes balls and pins, finishes, it could include on certain occassions refreshment tables which they might have bought from us—"they" meaning a

[2825]

bowling proprietor.

It would include pin maintenance equipment, it would include lane maintenance equipment for maintaining or keeping lanes in playing condition and cleaning them off.

Usually the contracts included more than just the—included more than the lane, it was made up of many items, we could sell a couple of hundred sets of pins in a bowling contract—

Q. For a 200-lane establishment?

A. Well, no, but they would buy in many cases, "they," the bowling prospective customer would buy enough pins for at least one season, and sometimes two seasons, and if he had a 40-lane set-up, and if he bought four sets of pins per lane, he would buy 160 sets of pins, somewhere around $60 per set, that was a good chunk of money, $10,000, as part of the contract, approximately.

Q. What about the thing that comes up between two alleys where you put your finger down at the wrong time, they get smashed between two balls?

A. It never happens on our courts.

The Court: Did you ever bowl?

The Witness: I bowl every Monday night except when I am down here.

[2826]

The ball return sections are a very important part, and I did forget them. There are two types of ball return sections. In the early days back in the late '50's there was a surface ball return in which the ball came back visually, and later an underground ball return or subway ball return was designed so you don't see the ball any more. Those have some real mechanisms in them.

We have this—almost always in our equipment a ball lift at the front end which in case there is not

enough power for the ball to come up, the ball lift will lift the ball up and put it on the rack, and it will not slow down a game, which has made our equipment very well accepted.

[2827]

Q. All these things you have described, the kick-back behind- the pinsetter or underneath it, the masking unit in front of the pinsetter to hide the unit from the public, the gutters going along the sides of the alley, the ball return mechanism, extra balls, extra pins, and the settees, all of these things are included generally in the $4500 lane, per lane contract?

A. 4500 to $5,000, yes. Telescore—an automatic foul line, the light that goes across, instead of in the old days just—there used to be a man sitting on the wall to judge a foul.

Since about 1946 or 7 there has been an automatic foul line. And that's usually included in the package of what is a bowling lane.

Q. Mr. Rudo, with respect to the pinspotter—pinsetters that Brunswick repossessed, 1961 through 1964, what efforts were made, first of all, to try to sell those repossessed pinsetters?

A. We were—after it was fully determined and all situations had been tried, we had promotion men out, we had extended the contracts for a man whose payments were lower, and everything that was humanly possible to keep that man in business, we repossessed, but before we would repossess we would try to get him

[2828]

to find somebody to take over his business, and if he couldn't we were after our salesmen to take over the business.

As I said earlier, in 1962, 3, 4, 5, 6, we couldn't, 7, we couldn't move the merchandise. For every one we sold two came back.

Q. But were sales of used pinsetters made?

A. Yes. On those figures there, we sold about 130 or 40 bowling centers with equipment, we sold basically the equipment was in it, but we never pulled it out, we sold them in 1963 and 1964 to proprietors, so that they could take over business that had some leagues and that they could make the deal.

We never took that equipment into our warehouse. We either leased it or we sold it to them. It was about 140 centers.

In my calculations I ran to 200 centers like that in 1968 and 9 where we sold them in place, we sold the equipment, but we usually sold or leased the equipment, but we usually had them to work with them to make a deal with the landlord or with other purveyors so they could take over the center as a going business and have those leagues and those people who were there.

[2829]

These were ones that we had repossessed and ones that we could get people to take over.

Q. I show you a copy of defendant's Exhibit 4 which is in eivdence, and I have the exhibit itself up on an easel in front of the jury.

You indicated before you couldn't see that far as I give you a copy here in your lap.

Does the bottom line on that chart reflect the actual experience of Brunswick in its sales of used pinsetters?

A. It shows what we repossessed. Then it shows what we sold. Yes. Of course, after about 1968 or 9 we were selling some out of the warehouse, but most of these others earlier were sold in place.

Q. When you speak of a two to one ratio, what numbers were you talking about as indicated on Exhibit 4?

A. The year 1963 there were 3354 repossessed and we sold 2285.

In the year 1964, there were 4592 repossessed and we sold 2447.

In the year 1965, we repossessed 5,996 and we sold 1,740. I have—in the year 1966, we repossessed 3658 and sold 1,265.

My general feeling is it is two to one. I think it may even be better.

[2830]

Q. Mr. Rudo, with respect to these pinsetter units that Brunswick had to repossess you gave a figure a moment ago of something over $10,000. What did that represent?

A. In 1963 and 1964 when we met many times with our credit department who was responsible for the receivables position, and in 1964 they were quite concerned, and I am recalling from memory, but approximately the receivable balance on a per lane—the average receivable balance on a per lane basis in our installment credit division was about ten-five, ten-eight, it may have been, which means that the man made a contract for, let's say, $12,000 times 40 lanes, would be $480,000, so I can figure easy, rather than take the 500, at the year 1964, approximately, he would still have owed approximately $440,000, 400 to 440,000, 1964 and 1965, of the balances that had been outstanding, and this had us quite concerned because we had heavy loans, and this was the cash we needed to pay off our company's indebtedness.

Q. This was money that was to be paid but wasn't being paid to Brunswick?

A. That's right. That was money that was owed us on contracts by bowling proprietors who were in business.

[2831]

Q. Mr. Rudo, did some change take place in the executive status of Brunswick towards the end of 1963?

A. Yes.

Q. What was that?

A. Well, at the end of 1963 Mr. Bensinger, who had been chairman of the company and who had been the chief executive and chief operating officer, decided that he ought to have a chief operating officer. And he brought Jack Hanigan, John L. Hanigan, to the company as president. And Jack Hanigan became chief operating officer.

Q. How do you spell Mr. Hanigan's last name?

A. H-a-n-i-g-a-n. Don't spell it with two N's. He doesn't like it.

Q. Where did Mr. Hanigan come from?

A. He came to Brunswick from Dow Corning, but he had been with Corning Glass most of his working life, prior to coming with Brunswick.

Q. Do you know, Mr. Rudo, whether Mr. Hanigan in the early part of 1964 shortly after he came to Brunswick devoted any of his attention to some of the problems you have described with respect to repossessions and the inability of Brunswick to sell used equipment or new equipment?

A. Immediately upon Jack Hanigan's arrival in

[2832]

December 1, 1963, or some place therein, he got immediately involved, because in his opinion this was the most critical problem facing Brunswick. There were hundreds of millions of dollars involved in receivables, in loans, and there were—these were all in jeopardy, and really, as I indicated once before, at some point around in 1963 and 1964 we were not—1964 particularly—we were not certain who was not paying because he couldn't pay and who was paying—who was not paying because they didn't want to pay.

And there were a number of them both ways.

Mr. Hanigan was also concerned because we were selling lanes and pinsetters at five, six thousand dollars in the marketplace, and he had ten thousand eight on his books, what would happen to his receivables position, and I guess we had many meetings between himself, installment credit people, our division, financial people, and discussing the entire ramification of what existed in the marketplace, what would happen to our company, and his prime concern was that we collect the receivables because this was the only way we could pay our debts.

We did not find that the banks would take pinsetters for payment in debts. Jack wanted us to extend bowling centers as much as possible, terms, and to try to collect our receivables.

[2833]

Q. What was your position again in early 1964?

A. In early 1964 I was president of the Bowling Division, which was made up of basically the manufacture and sale of bowling and billiard equipment.

Q. Did you consult with Mr. Hanigan about this problem in 1964?

A. Yes, sir. I was involved in many discussions on this as to what were the best ways to solve these problems. We had—pinsetters out in the field to people that literally left, that we didn't have crews to go out there and take them in to dismantle them, that were sitting in buildings and were exposed.

It is easy to sit today and look at it differently, but I can assure you if you lived through it, it was a different situation.

Q. While we are there, for a moment, what would Brunswick do actually when the center with 40 lanes and 40 pinsetters was in effect abandoned by the bowling proprietor, stopped paying his bills, and he left without paying the unpaid balance?

A. In 1963 and 1964 we had to literally saw up the lanes, pull them out of the building, dismantle the pinsetters and take them out. We had pinsetters and lanes in warehouses all over the United States.

[2834]

We had them in Texas, we had them in California, we had them in New York, we had them in Jersey, we were literally—in fact, we eventually consolidated so we could know where they are and what was any good.

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Q. Mr. Rudo, can you recall any particular meetings or discussions with Mr. Hanigan where the two of you reviewed the possible ways of alleviating the problem?

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[2836]

A. Oh, yes, we met about every week to discuss terms, discuss what was happening in the marketplace, as far as sales, and down payments, and what should we do. And we reviewed the fact that we were leasing to those proprietors that we could get to lease, on an interim basis and on a short-term basis, and this was not working.

We were trying to sell them. And the credit department had been extending, and we were out as far as ten

years in some cases, and we were getting requests for 12 and 15-year extensions.

Q. Can you separate in your own mind today, recalling back to 1964, any one, or two, or a series of three or four meetings, from these weekly meetings that you have just described in early '64, can you in your own mind segregate those meetings?

A. Well, about March or April we were coming to conclusions as to what we had to do.

Q. And is it possible for you to segregate what happened in any one or two of those meetings?

A. No, because they were all on the same subject.

The Court: What about the year?

The Witness: Oh, '64. Jack Hanigan came in December of 1964. It was somewhere between the first and tenth. I am not sure.

[2837]

Q. Of what year?

A. 1963. And then commencing almost immediately he got into this subject. And I would say on a weekly or every two weeks we had meetings on it, to discuss the situation. And this continued in January, February and March. And about the first of April, we arrived at some conclusions as to what we had to do to protect Brunswick and protect the situation, because it became quite concerned.

There had been a $15,000,000 charge against our annual statement——

Mr. Hoffmann: Pardon me for interrupting, your Honor. If there is no way in which these meetings can be identified, perhaps there is a place where they took place. If there is no place where they took

place, and there is no time when they took place, I don't know how they are admissible. I don't even know the persons that were present.

The Court: I was just going to say, how about some of the persons who were present? See if you can fix the time and place, and who was present.

The Witness: That's easy.

The Court: What was discussed specifically,

[2838]

if you know, and what region of the country was involved, if any?

By Mr. McNeill:

Q. Where were your offices——

A. Our offices at that time were at 623 South Wabash. The meetings were held on the fifth floor in the executive conference room.

The Court: Chicago?

The Witness: In Chicago.

Q. What executives met during those meetings?

A. In those meetings, as I recall, the financial people were always involved, and it may have been Mr. Cahill who was vice-president of finance at that time, and some of his people; the ICD people, the installment credit people were there; Mr. Abernathy, Mr. Rice, Mr. McGrath, they were in and out of meetings; Mr. Urbanek, the comptroller of the company, was there at that time; I was in attendance; Mr. Roger Bensinger; Mr. Jack Thomas; Mr. Jack Reichert.

There were many people who were in these meetings, because we needed all the information we could get, and all the inputs we could get as to the situation, because it was a very critical situation.

[2839]

Q. And these people you have just described, were they responsible Brunswick officials at that time, for these various areas?

A. Well, Mr. Cahill was in charge of finance, vice-president in charge of finance; Mr. Abernathy was the credit manager of the company; Mr. Rice was involved—he worked for Mr. Abernathy in the credit department, he is now head of it, but at that time he worked for Abernathy; Mr. McGrath was in charge of collections; Mr. Bensinger was working for me at that time in marketing; Mr. Reichert was working for Mr. Bensinger, and he was responsible for the sale of used equipment.

We had a lot of Brunswick executives who were devoting a lot of their time, because this was a very serious and important problem.

And this went on up—in January, February and March, into April of '64, when we resolved what we would do and new policies came out.

Q. The problems that you were discussing in the winter and spring of 1964, were they isolated with respect to any particular geographical area of the United States?

A. No, sir; they applied to the entire bowling situation in the United States.

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[2843]

Q. Mr. Rudo, following these meetings in the winter, spring of 1964, was any decision reached at Brunswick to change policies that were then in existence?

A. Yes, there were. We——

Q. When was any decision made to change any policy?

[2844]

A. In early April, 1964 our policies became more definite, is what really happened, and they were clearly defined to all of us who had been attending these meetings.

Our lawyers, Mr. Nieman, his people, Mr. Cahill from the Financial Department and his people, Mr. Abernathy and Mr. Rice, myself and my people, Mr. Roger Bensinger and Mr. Reichert, Mr. Hanigan was there, Mr. Thomas was there, in April these policies firmed up.

What happened was that we decided after we had considered many different approaches—as indicated, I think yesterday, we had been interim leasing bowling centers and bowling equipment, particularly we had tried to sell them at all kinds of prices down as low as $6,000 for a package, line and pinsetter.

We have reviewed that, we have reviewed our promotions, we even considered just letting the man stay in business and make payments whenever he could.

But as I think I also said yesterday, they would not have worked out well because of its effect on our other people.

Q. What policy was changed or firmed up or modified in April 1964?

A. Our policies which were then duly announced dur-

[2845]

ing the year later in 1964, and particularly in the Fall, in October, but it was promulgated and put into effect as we could, we firmed up the price on any used equipment that we had in inventory, the price would then be $8500.

Q. Not $6,000?

A. Not $6,000. $8500.

This was for A machines, and where there was a package of A-2 machines, it may have been 9400, I'm not sure of that price.

30 percent down was an absolute minimum.

Q. Was that a change?

A. Yes, sir. As I indicated yesterday, our down payments had deteriorated to 10 percent, in some cases.

Price was firmed at $8500, down payment at 30 percent, we firmed up price that we would—we firmed up interest rates, would be four and a half percent add on.

Q. What was it up to that point?

A. Six percent simple interest.

Q. Well—

A. And that's a difference, four and a half percent add on—I'm not—it is around 8.5 interest.

Q. You mean—are you comparing now 8.5 with what?

[2846]

A. With six percent.

Q. With six percent?

A. Yes.

Q. So that the rates of interest were increased?

A. That's right, because money was getting more expensive and our borrowings at that—this was in 1964—interest, and we were—we were dealing with chains, and had been taking their subsidiary corporations.

[2847]

Q. Excuse me for interrupting. What is a chain, as you used the term?

A. As I use it, it is usually a master corporation that has many bowling centers that they supervise. And in the cases of our industry, these chains were usually public companies, they sold stock. And in most cases they were forming subsidiary corporations for each bowling center and maybe in some cases it went as far as sometimes they had a chain for a bowling center—not a chain, a subsidiary for a bowling center, they had a subsidiary corporation

for owning the pinsetters, and they sometimes even had a subsidiary corporation that owned the lanes, and maybe even the bar license.

So there were many ways. Anyway, in many cases, they insisted on signing only these local corporations—if I might use in quotes "local"—to sign our contracts.

And up until '64 we had accepted this. With the new policies, it was determined that in any chain operation of bowling centers, the parent company would now have to sign, because this is the only financial responsibility that we knew existed.

Q. Was this chain that you have described actually put in as a policy of Brunswick in April 1964?

A. This is when the decisions were made. But in

[2848]

some cases it was not feasible to put all of them in effect immediately. But they were—all of us, when we left these meetings, knew that this was the policy, and they were put into effect—everybody was notified about it right away.

Q. Was the price for used equipment, this $8500 minimum price, to be uniform in all instances?

A. Yes, sir.

Q. And the used equipment was the repossessed pinsetter and lane?

A. This was repossessed pinsetters and lanes, either in place in a bowling center or in the warehouse.

Q. What about the down payment requirement, the new one, of 30 per cent, was this to be uniform?

A. Yes, sir.

Q. For all customers?

A. Yes, sir.

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[2849]

Q. What was Brunswick's policy as of April 1964 with respect to the finance charge?

A. It was to be uniform and charged to all customers.

Q. Was anything decided in April 1964 with respect to the possibility of Brunswick actually operating the equipment that had been repossessed in place in a bowling center?

A. Yes, sir; in April—as of the discussion of all the things that we might possibly do—I was given the assignment, as the head of the bowling division then, by Mr. Hanigan, to investigate the possibility of operating bowling centers, because we felt that some of those that were being repossessed could be operated and made into viable or successful businesses.

This came out of those meetings, as I indicated yesterday. The avalanche of repossessions had caused us much difficulty. We had them stored all over the

[2850]

United States.

The Court: Just a moment.

Mr. Hoffmann: Your Honor, I am going to object. This is unresponsive.

The Court: Let's go back a minute. Just listen to that question.

Read it, please.

(Question read as follows:

"Question: Was anything decided in April 1964 with respect to the possibility of Brunswick actually operating the equipment that had been repossessed in place in a bowling center?")

The Court: Answer yes or no.

The Witness: Yes, sir.

The Court: What was the policy? Never mind the discussion. What was done?

The Witness: I was given the assignment, sir——

The Court: What did you do after you got the assignment?

The Witness: —to investigate.

The Court: Then you investigated.

The Witness: Yes, sir. And in the summer of 1964 we made a decision that we would put a

[2851]

valuation team out to evaluate some of the centers that had been repossessed, to see if they had a potential to be a successful business.

The Court: As a result of that, what happened?

The Witness: Well, sir, I went off to Harvard.

The Court: With or without the valuation?

The Witness: Without the evaluation, sir.

The Court: You left them home?

The Witness: Yes, sir.

The Court: Who took charge after you went off to Harvard?

The Witness: When I left, Mr. Jacobson was put in charge. And I returned in December. And we discussed the situation at that time and found that their evaluations had indicated there were a number

of bowling centers that could be operated, and that we should go into the business of operating bowling centers.

And the first one repossessed—and BCO started in operation in late December 1964. In January 1965 Mr. Hanigan formed a separate division. I was removed from the bowling division and made president of the new division.

[2852]

By Mr. McNeill:

Q. Did you take any steps in having charge of this new division to have others working for you, doing particular jobs?

A. Yes, sir.

Q. And what steps did you take?

A. Well, the first thing I did was to call a meeting of our financial group, and our legal people, because we had never been in this retail business—I didn't know what kind of—and personnel people I had tied together—I had never been in this kind of business, and I had to decide how to organize, and what we should do.

[2853]

The Court: And you did, right?

The Witness: Yes.

The Court: What did you do? You said you repossessed and operated in December and January. Then you had a meeting at which other decisions were made.

As a result of those decisions, what did you do on behalf of Brunswick? If anything?

The Witness: I did a number of things, your Honor.

I asked the Legal Department to give me some guidelines in how we should operate from their point of view.

I asked the financial people to give me some guidelines on how we should operate, because their receivables were in jeopardy.

I then formed teams of three or four of us, we went out and visited people who sold services and sold products to dealers or distributors, and also competed with them. We visited——

Q. What do you mean, you went out and saw people?
A. We saw companies. I wanted——

The Court: For example?

The Witness: I wanted to find out how

[2854]

they were organized, their relationship with their customers and their relationships with their own stores.

I went to Standard Oil of Ohio, who operates over 30 percent of the Standard Oil stations in their marketing area.

I visited Hart, Schaffner and Marx, who operated 107, and talked with their president or the president of their retail business on how they operated their stores, what their policies were as it related to their customers and their own stores.

I talked to Holiday Inns, who sold equipment to most of their franchisees and operated, oh, 80 some of their own Holiday Inns. I wanted to know how they related to their customers and how they related to their own operations, and how they were organized.

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[2855]

The Witness: We visited about seven or eight companies to get a feel of what transpired and how they were related to their customers and to their own opertaions, which helped us form our own policies as we went along.

Q. And did you have an opinion at that time after visiting those companies to whether the 14—sorry, whether the—strike that.

When was it that you received any advice from your legal people about giudelines for operating bowling centers?

A. February 1965.

[2856]

Q. When was it that you had completed your visits to these companies you have just described?

A. About April 1965.

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[2857]

Q. Mr. Rudo, did you form an opinion as to what effect Brunswick's operating bowling centers would have on its customers?

A. Yes.

Q. What was your opinion?

A. My opinion was that based on the advice we had received from our Legal Department, 14 points written to us in February by Mr. Seeley, and the general policy set down by our own management and our financial people that we could work very well with the bowling proprietors and we could actually help them as time went on.

Q. Now, during the calendar year 1965, were there a number of bowling centers that—where the equipment was

repossessed by Brunswick and Brunswick turned the operations of that equipment and those centers over to BCO?

A. Yes, sir.

Q. Do you know the extent of the number of bowling centers and the number of pinsetters involved?

[2858]

A. Well, in the first year domestically we took over 124 centers.

The Court: What year?

The Witness: 1965. We took over 124 centers, and it was better than 3,000 lanes.

Q. Did you evaluate centers, other centers, in the United States?

A. Sure, we evaluated, I don't remember, but over a period of six years from 1965 to 1962, we evaluated over 600 bowling centers in the United States.

The Court: 1965 to 1972?

The Witness: I'm sorry.

• • •

[2862]

Q. Was it your experience then when a net 40 pinsetters was turned over to BCO for operation that you got some lanes, as well?

A. Yes, sir; we got 40 lanes, also.

[2863]

Q. All right. Once again, what happened to the other pinsetters, the difference, for example, between the 5,996 pinsetters that were repossessed in 1965 and the 3,629 pinsetters that were turned over in that year to BCO for operation?

A. Most of those went into warehouses. Some were sold in place.

Q. Now, did you have any specific guidelines with respect to your evaluation of a bowling center, where the equipment had been repossessed, before you would take it over for operation?

A. Yes, sir; after we evaluated it, we had as a guideline, and it was our hope, that within two years it would have a positive cash flow, and within the third year it would be profitable.

Q. And did that guideline result in your not taking over some centers you evaluated?

A. Yes, sir. I indicated to you earlier, over the period from January '65 until the present we have evaluated over 600 bowling centers and at no time, to my memory, did we, in the United States, ever have more than about 168, or 9, that we were actually operating, that we had repossessed.

Q. Mr. Rudo, was there any rigid rule as to how long you could or would operate a bowling center

[2864]

that failed to produce a positive cash flow?

A. There was no rigid rule. What I was told by Mr. Hanigan was to get it in a positive cash flow as soon as possible.

Q. Would it have been reasonable, in your opinion, to have a rigid rule?

A. No, sir.

Q. Why not?

A. Because there are many factors that make up for a successful bowling center. In the early years particularly we were at the mercy of whoever we had as managers, in our early training period.

So, therefore, in many cases our lack of success, in our operating people's minds, was the lack of good managers. So, therefore, on occasion we had to change managers to see if that helped us. And we did find that it did help us in many cases.

Q. Can you think of any instances where you stuck with a house that was not producing a positive cash flow because you thought you could turn it around, and it did?

A. I think Fort Lauderdale is a very good example of it; I think Belmont in Pueblo, which I know, has been discussed in this case. There are others—many in the United States.

[2865]

Q. Those are examples of what, sir?

A. Where they had negative cash flows for maybe a year or two after we took them over and they became very positive cash flows and profitable in ensuing years.

Q. Mr. Rudo, going back to this 14 points, why was it that you went to legal people for operational guidelines?

A. Well, I have been an executive in a home office since 1950, and when we go into any major program we consult our legal department, our staff legal department.

All of our market plans are approved by them, all of our advertising copies. They work very closely with our legal department.

Q. Mr. Rudo, point number one of the 14 points—and, again, I have reference to the 14 points as found on plaintiffs' Exhibit 27—says, "Where any such bowling establishment is to be operated by Brunswick Corporation directly, or indirectly through its corporate subsidiary, separate books and records should be kept reflecting in detail the capital investment, income and expenses of each such establishment."

Sir, do you know whether that point or guideline has been adhered to consistently by BCO?

[2866]

A. Yes, sir; it has, to the best of my knowledge.

Q. Point number two reads, "Repossessed pinsetters and alleys in establishments taken over, or newly set up for operation by Brunswick Corporation, should be capitalized at Brunswick's current list prices applicable to the resale to others of like repossessed goods in similar condition."

Do you know whether that has been adhered to consistently by BCOD?

A. In 1955 this was adhered to absolutely.

Q. In—

A. In 1955.

Q. 1955?

A. I'm sorry, '65.

In 1966, our accounting department, because of certain capitalizations necessary, because of some things done in the corporate headquarters, the IRS requested changes—

Q. Who is IRS?

A. I'm sorry. Internal Revenue Service.

And they changed their method of handling depreciation on BCO. So this has not been adhered to as written here.

• • •

[2867]

Q. It has not been adhered to because of this one change you have described?

A. Yes, sir.

Q. Did that change have any effect on the operational aspect of the bowling center in place?

A. No, sir.

Q. Point number three reads, "Brunswick Corporation may recondition, modernize or enlarge such establishments, using either new or repossessed Brunswick goods, in order to make them more efficient, attractive and profitable. In such cases, the cost of such Brunswick goods should be charged to the establishment at Brunswick's current list prices for the sale to others of like goods in similar condition."

Has that point been adhered to, consistently by BCOD?

A. Absolutely.

• • •

[2868]

Q. Now, Mr. Rudo, I read you Point 4 having to do with new centers.

"Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in each case that the location would support such establishment without imperiling the business of any existence establishment in the area, and that no other person or entity is available which is ready, able and willing to open an establishment in such location."

Mr. Rudo, has Point 4 been adhered to consistently by BCO?

A. Absolutely.

Q. Now, there have been some new locations, new centers, where BCO has opened its location, have there not?

A. Yes.

Q. Approximately how many in the United States?

A. Approximately seven in the United States.

Q. I will come back to those later.

A. Yes, sir.

Q. Mr. Rudo, Point 5, which has to do with the takeover of centers, the acquisition of centers:

"Brunswick Corporation should not acquire any

[2869]

existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys unless it should appear that such establishment had become a failing business, and that the operator had requested Brunswick to take over."

Mr. Rudo, has Point 5 been adhered to consistently by BCO throughout its history?

A. Yes, sir, it has.

Q. Mr. Rudo, has BCO ever acquired any bowling establishment containing AMF equipment?

A. They have never acquired any, no.

Q. Well, there has been testimony suggesting that BCO operates a bowling center in Rahway, New Jersey, containing AMF equipment; is that so?

A. Yes, we operate other bowling centers for proprietors who have AMF equipment, not only in Rahway but in other sections of the country.

Q. Are these acquisitions by Brunswick of these establishments?

A. No, sir.

Q. How do you operate such establishments?

A. These are management contracts, and in the case of Rahway it is a lease. We have leased the equipment on the physical premises.

Q. What were the circumstances of Brunswick

[2870]

beginning to operate under this lease at Rahway?

First of all, when did it take place, approximately?

A. About a year or two ago, I'm not certain. About a year ago.

Q. Do you know personally what the circumstances were of Brunswick's beginning to operate that equipment?

A. Not all of it, just in general. Generally, I know.

I know that Mr. Schmidt requested us because he was getting older and his son was not interested in operating, that we had this management service, and he'd like us to get involved.

Our people did. A lease was signed, I signed it.

Just about a week ago I found in inquiring that there was an option to buy in that lease, and since we found that out, which is contrary to this point on, contrary to our policy and philosophy, we have written and told these people we are—that option we will never exercise, and it is as far as we are concerned null and void.

Q. Now, Point 6, having to do with equipment and supplies, reads as follows:

> "Bowling equipment and supplies received by any Brunswick operated establishment from Brunswick Corporation should be charged to the establishment at Brunswick's current suggested list prices for the

[2871]

> sale of similar supplies and equipment to bowling establishments by Brunswick distributors."

Mr. Rudo, has Point 6 been followed consistently by BCO?

A. Yes, sir, absolutely.

Q. Point 7 having to do with Brunswick equipment and supplies that are in short supply reads as follows:

> "In the event that any articles of bowling equipment or supplies sold by Brunswick Corporation

> should be in short supply it should pro rate the available supply in an equitable manner between Brunswick operated establishments and unaffiliated Brunswick customers."

Has that point been followed consistently by BCOD?

A. Absolutely.

• • •

[2872]

Q. Mr. Rudo, can you give any illustration to indicate how point number seven has been applied?

A. Yes, sir. Last Fall, and I think the summer before, pins were in tight supply in the United States, and BCO needed them, and had to wait well into October and November. I had lots of pressure for them to be shipped earlier.

Also, BCO last year was ordering jetbacks, which is a type of equipment to speed up pinsetters, and we had many orders that needed delivery last summer, and I made BCO wait until well into the Fall until after the league season had started because we were in short supply.

We took care of our customers first.

Q. By "customers", are you talking about bowling proprietors?

A. Bowling proprietors in the United States, yes.

[2873]

Q. Mr. Rudo, point eight, having to do with advertising and promotion reads as follows:

> "A Brunswick operated establishment may engage in advertising and promotion up to a level of expenditures comparable to that of soundly managed bowling establishments operated by others."

Has BCO consistently followed that point?

A. Absolutely.

Q. Mr. Rudo, what have you done, if anything, to determine what soundly managed bowling establishments operated by others has been in this area?

A. Early in 1965 and during my career, I have been aware of what bowling proprietors generally spend, and on the average it has run three to six percent of their total revenues.

I have also checked other retail businesses and found they ran four to seven percent of their total revenues.

We set up our budgets at BCO and we adhered to this absolutely, we set up a total advertising and promotion budget of three percent.

Q. Three percent of what?

A. Of their revenue, of BCO's revenue.

The Court: Each center?

The Witness: Yes—well, we do it as a

[2874]

total and then split it back to each center.

Q. With respect to this advertising and promotion budget of three percent that you just testified about, does that include the expense of Bowl-Your-Way-To-Europe program?

A. Yes, it is within the three percent. It is a very small part of it.

Q. What about the trophies given by the local centers to bowling leagues?

A. That's part of the three percent.

Q. What about professionals for the youth program conducted by the local centers?

A. That's part of the three percent.

In early years it was 2.8, and only in the last two or three years have I allowed them to go to three percent.

That also includes administrative costs for advertising people that might be on our staffs and things like that.

Q. Do you regard that three percent limit that you have held BCO to to be conservative?

A. Yes, sir, very conservative.

Q. Point nine reads, "Any advertising or promotional aid given by Brunswick Corporation to its bowling establishments apart from local advertising or

[2875]

promotion charged to the operating expenses of such establishments should be made available on a proportionately equal basis to all other bowling establishments operators who are Brunswick customers."

Does Brunswick Corporation give any promotional aids to BCO only which are not paid for out of the three percent advertising and promotional budget you just mentioned?

A. Absolutely not.

The Court: Just a minute.

Mr. Hoffmann: Your Honor, the vice in these questions, if I may be permitted to say so, is that he supplies the witness with the answer, he has done that for three of the 14 points so far.

I ask that this question not be allowed on the ground that it is leading.

The Court: I will sustain the objection, Mr. McNeill. May I suggest this, that when you give a point to this witness, say what is the policy of Brunswick with regard to that point, and then let him respond, rather than give him the answer.

I know it is very difficult not to ask the question without giving him the answer.

[2876]

Just tell the jury in your own words with regard to nine what is the policy of Brunswick.

The Witness: The policy of Brunswick is that we do not give BCO any advertising money.

The only advertising money that BCO gets is out of their own revenues and it is charged to them as costs.

We do have an advertising budget in the bowling—other side of the Bowling Division which we use broadly in the industry. We spend—well, we spent $200,000 as part of a million dollar fund that the industry has raised. The Bowling Division, the people who manufacture and supply, which is the other side of the business I run, contributes out of their budget $200,000.

Now, every bowling proprietor in the United States gets benefit from that. This million dollar fund, which started, and I had a lot to do with it getting started, in 1968 or 1969, in the industry, overall industry, probably has done more to bring bowling back in 1971 and 1972 to a very good business for most bowling proprietors in the United States.

I think—I know it is, it's been an

[2877]

absolute great help to most bowling proprietors.

BCO also contributes to that separately out of their budget because we tax them $3 a lane and it doesn't go—it is not part of the 200, they contribute I think it is 15,000 dollars on their own to this national fund.

The Bowling Division also helps on the ABC, the American Bowling Congress, tournament, W. I. B. C., with the proprietors on their promotions, and participates in their convention.

We spend money, of course, to advertise our own products which they are selling. That's a separate budget and is in no way related to BCO and BCO gets none of that money except from a number——

Q. Mr. Rudo, turning to point ten, the first part, having to do with lineage charges.

"Lineage charges of any Brunswick operated establishments to be maintained at as high a level as local competitive conditions reasonably permit. Special prices, terms and conditions for league play should be according to a non-discriminatory list adopted by such establishment and should be comparable to the prices, terms and conditions of reputable competitors as nearly as might be determinable."

[2878]

Mr. Rudo, what does the last phrase there, "as high a level as local competitive conditions—" or rather, in the first sentence, "as high a level as local competitive conditions reasonably permit," what does that mean?

A. That means when we are in an operating area, in a market, we should charge the prices that are at the highest level in that market.

If we were in an area of New York City, where they were getting 65 cents, it means that we should be charging 65 cents.

If there are other areas in New York City that are getting 60 cents, but the area we are in is charging 65, we should still be charging 65.

If we are in an area of New York City, let's say the Bronx, which is, let's say, getting 60 cents, we'd be charging 60 cents even though in Manhattan it may be 65.

We have religiously adhered to that policy, to be at the high end of a market at all times in our pricing of a bowling game.

[2879]

Q. Does that mean that your policy is to be exactly the same as every other competitor in the area?

A. No.

Mr. Hoffmann: Same objection.

The Court: I will let it remain. Next question.

Q. Mr. Rudo, when Brunswick begins operating a bowling center, does it sometime occur that leagues that have been bowling at that center have outstanding contracts extending into the very next season?

A. Usually it occurred——

The Court: Can I hear that question again?

(Record read.)

A. Yes, sir.

Q. What is Brunswick's policy with respect to that situation?

A. Where we have inherited leagues and contracts with leagues, we have adhered to what was in existence at the time we took it over.

If we took over a bowling center in January, and they had league contracts, we adhered to it, and if it extended into the next season we'd live by those contracts.

But we would usually change after we took over. In most cases when we took over a new bowling center

[2880]

we raised the price, never lowered it.

Q. You say Brunswick has never lowered the price for bowling——

A. To my knowledge we have never lowered the price when we took over a bowling center and started operating it. We either stayed the same or raised it.

Q. Did anything occur in 1971 which prevented BCO from adhering to the policy you have just described?

A. Well, we really, we haven't taken many bowling centers over, but the thing that occurred in 1971 was that Mr. Nixon, the President of the United States, froze all prices and wages, and our company, Brunswick, has not raised any prices or wages—I won't say not raised any wages—but we have adhered to the policies laid out under Phase I, II and III, although Phase III we don't understand.

Q. Does Brunswick have any policy or plan with respect to prices for lineage after these restrictions have been removed?

A. Yes, sir. It is our plan in all of the contracts that our men are presently signing for the 1973-74 bowling season, which starts next September, and we are out signing contracts now for those leagues, all league contracts have at least a nickel increase per game.

We may not put that in force, depending—we are

[2881]

still waiting for clearance under Phase III. The company has not raised any prices either on supplies or bowling.

Q. It's been testified here that when BCO took over the operation of Ten Pins on the Mall in Paramus, New Jersey, it lowered the lineage prices; is that true?

A. No, sir, absolutely false.

Q. How do you know that?

A. Because I have here with me records of that situation and have checked the daily cash reports before we took them over and checked the daily cash reports right after we took it over, and in Ten Pins on the Mall we raised the adult price list, when we took it over it was 50 cents, and—in 9/6/68, the adult open play price was 50 cents, we raised it to 55 cents at night, and we left it at 50 cents in the daytime.

League, adult, was 50 cents at 9/6/68, which was before we took it over, and on 9/9/68 when we took it over average league price was 54.8 cents a game.

Q. What records did Brunswick have which would supply the information as to prices charged in 1968?

A. We have daily cash reports which are submitted every day to our accounting office.

These are a primary record recognized by the

[2882]

Internal Revenue Service, by accounting firms, and this data that I have read to you comes from those records. I have had that checked.

In 1968 we raised the open price at Ten Pins on the Mall at night to 60 cents, so within a three-month period we raised one, two, three, five prices, junior play to 45 from 40 in December—I don't know what the basis of the other testimony was. Our records and our revenues do not indicate that.

Mr. Hoffmann: Could we have marked for identification the record which the witness just read?

Q. When you were giving testimony just this moment you were referring to a record in your hand?

A. Yes, recap of our daily cash reports which I had made up for me from our records which we use all of the time.

Q. When was this prepared?

A. This recap was prepared last week so I could have it here today.

The Court: Let it be marked.

Mr. McNeill: I will mark the original of it.

Q. Is what I am now showing you the original from which that copy that you just referred to was

[2883]

made?

A. Yes.

Mr. Hoffmann: Could I have the one marked which the witness used? I haven't seen either one of them. That's the one that's significant.

The Court: Let both of them be marked.

(Exhibits D-31 and D-32 marked for identification.)

The Court: What would you call them, work sheets?

The Witness: Recaps of daily cash reports, your Honor. Ten Pins on the Mall—there are five of them.

[2884]

Mr. McNeill: These are being marked as Defendant's Exhibits 31 and 32 for identification even though it was at the request of the plaintiffs' attorney.

Mr. Hoffmann: Yes.

Mr. McNeill: So we have now marked as Defendant's Exhibit 31 for identification the Xerox copy that Mr. Rudo referred to, and as Defendant's Ex-

hibit 32 for identification the original from which that Xerox copy was made.

I will furnish another Xerox copy to Mr. Hoffmann and to the Court.

31 and 32, for the record, are identical. 32 is the original, 31 is the Xerox copy, each of them have some yellow pencilled highlights on them.

Mr. Hoffmann: May I point out that the highlights are not on the copy you gave me?

Mr. McNeill: At a recess I will be glad to furnish you——

Mr. Hoffmann: If you let me refer to that exhibits perhaps you won't have to do that.

Can I have both of them?

Mr. McNeill: I think Mr. Rudo has one.

The Witness: No, sir, I'd like to have it

[2885]

so I can——

Mr. Hoffmann: Your Honor, may I examine it for just a moment?

The Witness: You can examine it. You're welcome to examine it.

The Court: What do you think he is, the F. B. I., or something?

The Witness: I'm not so sure.

The Court: You're not so sure, but I am.

Mr. Hoffmann: I promise it will come back first, your Honor.

Here you are.

The Court: Is that the same one you are giving him back now?

Mr. Hoffmann: Yes, sir, it is.

The Court: Now, Mr. McNeill.

By Mr. McNeill:

Q. Mr. Rudo, what does this recap from Brunswick's records show with respect to the pricing at Interstate Lanes before and after Brunswick began operating?

A. April 15, 1965, which is prior to—that would be acquisition date, prior to acquisition, on April 5, the adult open play price was 50 cents, the league price was 50 cents, open junior price was 35 cents and the

[2886]

league price was 35.

The first DCR's we had——

Q. Excuse me, DCR?

A. Daily cash report, for the start of the following season, which is in October 1965, the open play price for adults, 50 cents in the daytime and 55 at night.

Q. Was that a change?

A. Yes, sir. It is an increase of 5 cents at night, which is right after we took it over.

The league price was 50 cents in the daytime and 55 at night, which is an increase of a nickel a line.

The junior play we raised in October 1965 to 40 cents open, and it was 35, and we raised the league play to 40 cents.

Q. What does that recap show with respect to the prices at Fair Lawn Lanes before and after Brunswick began operating?

A. Well, to help it out, we kept exactly the same prices that existed before and after on equipment.

Fair Lawn, repossessed it on April 15, 1965, daily cash report of March 22, 1965, showed 50 cents daytime, 55 cents nighttime open play, 50 cents daytime league play, 55 cents nighttime, 40 cents for juniors open, and 35 cents for league.

And on October 18, 1965, they were exactly the

[2887]

same prices. We didn't increase any prices in Fair Lawn until December 6, 1966, when we went up, 40 cents. At no time did we reduce price at any one of these centers. We only increased it.

Q. What do your records show with respect to Belmont Lanes in Pueblo, Colorado, before and after BCO began operating it?

A. We took Belmont on April 19, 1965, repossessed it, and prices were 45 cents daytime open price, 50 cents nights.

League play was the same, 45 and 50.

Junior play was 35 and 35.

And on May 19, 1965, one month after we took it over, repossessed it, we raised the daytime price and made all open play prices at 50 cents, league prices instead of having a 45 cent day, all league prices were 50, junior and league we stayed at 35, no reductions.

Q. What about Dutchess Lanes in Poughkeepsie, New York, before and after Brunswick began operating it?

A. We started to operate Dutchess on December 10, 1965. And the price—we kept exactly the same prices, except the night league price, which we increased from 50 cents to 55 cents on 12/13/65.

We took Dutchess over on December 10, 12/10/65. and 12/13/65 we kept all of the prices exactly the

[2888]

same except for league night, and that was increased to 55 cents.

Now, later in that bowling season we increased the prices at Dutchess in December—I mean in November 1966, which was the beginning of the following season, we increased league prices, and we increased the junior prices. I don't know who testified or why, but we never reduced the prices; we raised them.

[2889]

Q. Well, the Dutchess figures in that second column, December 13, 1965,—

A. Yes, sir.

Q. —show three different prices with respect to—

A. League play?

Q. —adult leagues, does it not?

A. Yes, sir; they were 45, morning—I can't read it. For the morning I think it says 45, day 50 and then 55. Is that correct?

Q. Yes. Is there much morning league play?

A. Generally there is not.

Q. And in that one instance, the morning league was a five cent reduction from the—

A. Oh, I missed that. Yes, you are right. Our league business on 12-10-65—I better go over it, I was trying to speed this up. I'm sorry.

They had adult open play business, 45 cents in the morning; 50 cents in the afternoon; and night, 55. All leagues were 50 cents.

When we took it over on 12-13-65 the open play we kept the same at 45, 50 and 55. The league play we made exactly the same as the open play, which was mornings 45, afternoons 50 and night 55. Night is when most of the leagues are on.

[2890]

And we did reduce the morning price on leagues to 45 cents, which is a very small part of the business.

Q. Do you know whether that morning bargain price of 45 cents attracted many bowlers to Dutchess?

A. It couldn't have, we later closed it for not doing business. Because if it did a lot of business in the morning, I am sure we would still be operating it.

Mr. McNeill: I will ask that defendant's Exhibit 32, which is the original of the sheet from which Mr. Rudo has been testifying, be admitted in evidence.

Mr. Hoffmann: I object to the admission of the document in evidence, unless the underlying materials from which it was extracted are here in the courtroom. I have no way of testing its fidelity.

Mr. McNeill: I may have those available, your Honor. I would have to check with my——

The Court: I will admit it subject to the condition that Mr. Hoffmann has the opportunity to examine on the underlying data that supports the exhibit. So ordered.

(Exhibit D-32 received in evidence.)

Mr. McNeill: I ask that there be marked as Defendant's Exhibit 33 for identification a

[2891]

document, the caption of which is, "Tenpin on the Mall, Paramus, New Jersey, locker and shoe rental, bowling and billiard prices."

(Exhibit D-33 marked for identification.)

Q. Mr. Rudo, I show you a copy of what has been marked as Defendant's Exhibit 33 for identification and ask you whether you are familiar with that record?

A. Yes, sir; I am.

Q. Can you describe how it was prepared, from what sources?

A. This record is prepared by the operating people who operate our bowling centers, from the manager to the district manager, to the V. P. of operations, to me. I get a copy of this every year—twice a year.

And it is my check on what we are charging in each bowling center in the United States.

Q. And do you know where the figures themselves come from before they are put on the report to you?

A. Yes, sir; these are the figures that the manager puts together, and he puts them on the DCR every day——

Q. DCR is what?

A. Daily cash report. And he also submits these on a report to his district manager, so that the district manager knows what he is doing. And we give

[2892]

this to our auditors so that when they go in the bowling centers they can check this out.

Q. Does this give you information with respect to what prices are being charged at Ten Pins on the Mall for bowling?

A. Yes, this is a recap of those reports that are made to me twice a year, telling me what occurred in '68, '69, '70 and '71, and where price changes were made.

Q. Does that record reflect any decreases in prices charged by Ten Pins on the Mall?

A. No, sir; not since Brunswick started to operate it.

Q. What time period is covered by the record that you are holding?

A. From September '68 to the proposed prices for June '73, which, of course, will not go into effect until we have approval from our Federal Government.

Mr. McNeill: I would ask that this document be marked as Defendant's Exhibit 34 for identification. The caption of this document is, "Fair Lawn Lanes, Fair Lawn, New Jersey, locker and shoe rental, bowling and billiard prices."

(Exhibit D-34 marked for identification.)

[2893]

Q. Mr. Rudo, I show you what has been marked as Defendant's Exhibit 34 for identification and ask you whether that is a similar report, such as the one you have just described, Exhibit 33, except that this has to do with Fair Lawn Lanes instead of Ten Pins on the Mall?

A. Yes, sir; it is.

Q. Does it cover the same time period?

A. No, sir; it covers from December '66 to the proposed prices in June of '73. And it covers for shoe rental, for lockers, for league business—league day and night—and what was charged the various years, and where we made changes.

Q. Does it show any reduction in price by Brunswick?

A. No, sir.

Q. And does this come from exactly the same records, the daily cash reports, and the semi-yearly reports to you that you have testified about?

A. Yes, sir. In our company each division manager is responsible for pricing and we do not delegate that. And that is the way I keep track of it, in that part of our business.

Mr. McNeill: I ask that similar documents with respect to Interstate Lanes, Lodi Lanes,

[2894]

Dutchess Lanes and Belmont Lanes be marked as Defendant's Exhibits 35, 36, 37 and 38 for identification.

(Exhibits D-35, D-36, D-37 and D-38 marked for identification, respectively.)

Mr. McNeill: So that we can keep our records straight here, the one for Interstate Lanes has been marked as Defendant's Exhibit 35 for identification, the one for Dutchess Lanes has been marked as Defendant's Exhibit 36 for identification, the one for Lodi Lanes has been marked as Defendant's Exhibit 37 for identification, and the one for Belmont Lanes in Pueblo, Colorado, has been marked as Defendant's Exhibit 38 for identification.

Q. Mr. Rudo, I show you copies of these four documents, which have now been marked for identification as Defendant's Exhibits 35, 36, 37 and 38, and ask you whether those are similar reports to you——

A. These are recaps of reports.

Q. Recaps of reports. —with respect to Interstate Lanes in Ramsey, New Jersey; Dutchess Lanes in Poughkeepsie, New York; Lodi Lanes in Lodi, New Jersey; and Belmont Lanes in Pueblo, Colorado?

A. Yes, sir.

[2895]

Q. And once again, what is the basic source of the data for those reports?

A. Daily cash reports and reports from each manager on what he is charging each year.

Q. To you?

A. Yes, sir; it goes to his boss and then to me. Yes, sir.

Q. Will you look at those and tell us whether any of them show any reduction of price by Brunswick?

A. No, sir.

Q. Not on 35?

A. Not on Interstate.

Not on Dutchess, except as I showed before, which was more detailed than that.

No, sir; Lodi.

No, sir; on Belmont, no price reduction.

Mr. McNeill: Your Honor, I would like to offer all these—33, 34, 35, 36, 37 and 38—into evidence, with the same understanding, that they be subejct to the supporting documents.

The Court: So ordered.

(Exhibits D-33, D-34, D-35, D-36, D-37 and D-38 received and marked in evidence.)

Q. Now, Mr. Rudo, I got sidetracked a moment ago on Point 10. I had not read the last sentence of

[2896]

Point 10, which I will do right now.

"Inducements used to obtain leagues should not be so attractive and persistent as to imperil the business of any existing establishment."

What has Brunswick's BCO policy been with respect to this point?

A. That we will not do this, that we will follow this policy. And we do it.

Q. Have you adhered to the policy or not?

A. Yes, sir.

Q. It has been testified in this courtroom that immediately after Brunswick took over Sunset Lanes, out in Deer Park, Long Island, that the managem of that center offered to Airborne Instruments Company leagues certain inducements to bowl at Sunset Lanes which were more generous than the inducements commonly offered at that time by other centers in the same area.

Could that have happened at the time, despite the policy set forth in Point 10?

A. That happened in '65. I would doubt it. I am not—it could have happened. We were so new, there may have been some policies that were not adhered to, to the letter of the law. I doubt that there was any—that they were as low as anybody else in the area.

Q. Do you know, one way or the other, the

[2897]

details of that?

A. I don't know the details; no, sir. But I think you can—I know you will get them from my brother, who is vice president—Bernie Rudo, who is vice president of operations——

Q. No, just answer the question. Do you know the details of that?

A. No, sir; I do not.

Q. Do you know whether Sunset Lanes offered the Airborne Instruments leagues the same extras or inducements the following bowling season?

A. I know they did not, because the league didn't bowl with us the next season.

Q. Mr. Rudo, do you have any policy or practice, as the man responsible for the operations of BCO, to check on the prices charged at the centers, BCO centers, and inducements offered to leagues?

A. Oh, yes, sir.

Q. What is it?

A. We do this very—in our whole company it is our responsibility, as a division manager—when I was in charge of BCO, and in the entire complex as it is set up now—to check pricing. And I use—I have division auditors who inspect and visit and shop bowling centers and report back their findings. And if we ever

[2898]

find a mistake, we correct it, where we find a change. We have outside shopping people—Dale Associates—who shop our bowling centers regularly and issue reports. And I see copies of them. And they check pricing.

We have corporate auditors who drop in occasionally on our bowling centers and report this.

In addition to that, our outside auditors, Arthur Anderson, periodically drop in the bowling centers. The two main sources of our division auditors and our outside shopping people.

• • •

[2899]

Q. Mr. Rudo, I read you Points 11 and 12 of the 14 points.

"Balls, bags, shoes and other merchandise sold in Brunswick operated establishments should be sold at Brunswick's suggested retail list prices with the retail sale thereof in other bowling establishments.

"12. Brunswick's bowling equipment and supplies, handled by Brunswick operated bowling establishments, should not be fair traded in sales to other bowling establishments in the same state."

Has BCO followed those two policies?

A. Absolutely. And we have followed it in the sales, since I have been involved in the sale of merchandise.

Q. And has Brunswick, as opposed to BCO—

A. Yes, sir.

Q. —followed the points there?

A. Yes, sir; 12.

[2900]

Q. Do BCOD centers carry the same line of bowling supplies that Brunswick sells to independent proprietors?

A. No, sir.

The Court: The answer is, "No, sir"?

The Witness: Yes.

The Court: BCO carries different products or merchandise?

The Witness: Yes, sir. We make up a different line for them. We give—

The Court: What do you mean "for them"?

The Witness: For BCO.

The Court: You mean Brunswick Corporation—

The Witness: Brunswick Bowling Division makes a separate line of bowling balls for BCO. The titles are different. We make many private label balls for Korvette or other people. And we make a line for BCO. It is different, the balls are named different. Sometimes their appearance—a black bowling ball looks the same—

The Court: How about the supplies you make for Whipple's Bowling Center in Detroit?

The Witness: The bowling balls, bags and shoes?

[2901]

The Witness: It would be different than BCO sells.

The Court: Why, because of labels, or what do you mean?

The Witness: Yes, because of labels.

The Court: Competition of products?

The Witness: Because of labels basically.

The Court: How about the competition of the product?

The Witness: Generally they are the same.

The Court: How about the prices?

The Witness: Absolutely the same.

The Court: All right. Of course, there is no such thing as a Whipple Bowling Center.

The Witness: We were using John Jones——

The Court: Not that I know of, anyway.

The Witness: We were using John Jones.

The Court: Well, he moved to Peoria.
He is in Biloxie, Mississippi.
Go ahead, Mr. McNeill.

By Mr. McNeill:

Q. Now, if a BCOD center sells a BCO private brand item, a bowling ball, is it substantially the same product, with a different label——

A. Yes, sir.

[2902]

Q. —as the Brunswick branded ball sold to the independent proprietor down the road?

A. Yes, sir.

Q. Does BCO sell it at any lower price than the purchaser, the independent proprietor, sells the substantially the same bowling ball down the street?

A. Absolutely not. We control it better there than we can in other private labels. They absolutely do not. We shop them. We are certain that they do not.

Q. Would it make any good business sense for you to sell a comparable product through a BCOD center at a lower price?

A. Of course not. The bulk of our bowling balls are not sold through BCO. A very, very small percentage.

The Court: How about those bowling balls with Macy's label on them, the same price?

The Witness: Well, we suggest to Macy's only that they should sell it at that price, your Honor. We don't control Macy. We can't tell them what to do. And sometime they cause confusion for us in the market.

The Court: The same product? Competition-wise, I am speaking of now.

The Witness: Some may be, some may not be. They may get a cheaper ball—we don't happen

[2903]

to sell Macy's, but somebody comparable to that. It could be a cheaper ball in a different way; yes, sir. There are some of them are exactly the same.

By Mr. McNeill:

Q. Is there ever the circumstance where BCOD centers sell the BCO line of balls as a discontinued line of merchandise?

A. Yes, sir. The only time that would occur, Mr. McNeill, is—at the same time we would discontinue a ball for the normal trade. If we had a blue ball that was selling at $27.95, and it was not good priced merchandise, or was not selling, the Brunswick side of our business had reduced the price, was going to move the merchandise, if BCO had a comparable line, they could reduce, but only at that time.

If we were not reducing it elsewhere, they could not. BCO has a very much smaller line than we sell through the Brunswick Division.

[2904]

Q. Now, Mr. Dankoff has testified that his centers can't sell Brunswick balls at prices as low as BCOD centers sell Brunswick balls for; is that true?

A. It is false. I don't know how he could make such a statement. Of course, he never buys any, so I don't know whether he knows it or not, really. But it's false.

Q. Has there been any growth in Brunswick's sales of all its bowling balls since 1965?

A. Oh, yes, sir. Well, we hit the low period in bowling ball sales in, I think, '66, and since that date our bowling ball sales have doubled.

If my memory serves me correctly, some place in '66—yes, '66—we sold about 300,000 balls in the United States, bowling balls, and in 1972 we sold over 612,000 bowling balls in the United States.

So if we were hurting other bowling proprietors—and over 50 percent of the bowling balls we sell—approximately 50 percent are sold through bowling proprietors. So if we

were hurting other bowling proprietors by selling through BCO, and if BCO was a bad name in the industry, our business would not double, in my opinion.

Q. How much of that increase is accounted for

[2905]

by sales by Brunswick to BCO?

A. BCO does about 14 or 15,000 bowling balls a year. So, as you can see, it is a small part of our overall bowling ball business.

Q. Mr. Rudo, I will read point 13 to you.

"In the purchasing of food, liquor, merchandise and supplies from sources other than Brunswick Corporation, Brunswick operated establishments should obtain written statements from the sellers thereof at the prices paid and inducements received by such establishments do not discriminate against other bowling proprietors purchasing goods of the same grade and quality from the same sellers. Purchasing for Brunswick operated establishments may be centralized, provided that the central buying agency should not induce or knowingly receive, directly or indirectly, any unlawful discrimination in prices, terms, conditions or services in connection with such buying."

Is that the established policy of BCO?

A. That is our policy and we follow it.

Q. Now, point 14 pertains to two things. I will read first the first part of it.

"Neither Brunswick Corporation nor any subsidiary operating a bowling establishment should become a member of BPAA or of any local affiliate thereof,

[2906]

or similar organization of bowling proprietors."

Has there been any change in that policy?

A. Well, we have generally followed this. On two occasions we have been members of the BPAA. This has had approval from our corporation, and our legal people, because we feel that the BPAA does play an important part in the industry.

We have kept very limited—BPAA is the national bowling proprietors association. And we have cooperated with them. We think they are important in promoting—helping promote the game of bowling. They are the large—they don't represent all bowling proprietors, but they represent a good portion of them.

So we have tried to show good will to them by putting in a couple—in a couple of states, I think it is Florida and northern California—some bowling centers into the BPAA.

Q. When did that occur?

A. That has occurred in the last three years.

Q. Now, what about the second part of point 14, "No one employed by Brunswick Corporation, or a subsidiary, should agree or cooperate with any such organization, or with any other bowling establishment or operator to fix prices, or restrict, or limit in any way competition in the opening or operation of

[2907]

bowling establishments."

Has that policy been adhered to?

A. Absolutely.

Q. Now, Mr. Rudo, we have completed the 14 points. And it has been testified here that BCO did hire away from National Bowl-O-Mat two of the latter's employees, a Mr. Klausmeyer and a Mr. Mahelevich. Is that true?

A. False.

Q. Well, did Brunswick ever hire those two men?

A. Brunswick hired them in the bowling division. BCO never hired them from NBO.

Q. Was BCO in existence at the time they were hired by Brunswick?

A. No, sir.

Q. What kind of work were those two gentlemen hired to do, by Brunswick?

A. Mr. Mahelevich was hired—first of all, Mr. Mahelevich came to Brunswick in July of 1963. This was three months after he had left NBO. So when we hired Mr. Mahelevich he was not an employee—when I say, "we," Brunswick—it is not BCO—he was hired in '63 as a regional promotion manager on the West Coast.

[2908]

He was part of those 28 men that we hired to help bowling proprietors improve their business. He was not hired for BCO at the time he came with us.

Q. When was it, again, that he came with Brunswick?

A. In July 1963.

Q. When did BCO become operational?

A. It was not formed until January 1965.

Q. What about Klausmeyer, when did he come to Brunswick?

A. Mr. Klausmeyer came with Brunswick in the Summer of 19—early summer, June or July, I think, of 1964.

Q. Was that prior to the time that BCO became operational?

A. Absolutely. He was hired as a regional promotion—he was hired as a promotion manager. A regional promotion man—which was what Mr. Mahelevich was one of—had promotion men working for them.

• • •

[2912]

Q. Mr. Rudo, did you ever talk to Mr. Dankoff about the possibility of selling to him the equipment in Moffitt Lanes in Brooklyn?

A. Yes, sir; I talked to him personally on the telephone.

Q. Please describe when that happened, how the conversation took place, and what each of you said.

A. Early in 1965 I was advised that Mr. Dankoff was interested in purchasing Moffitt Lanes. And as the head of BCO, and having known Ruben Dankoff for a long time, I called him on the phone, told him that it was for sale, as soon as we took it over, which would be very shortly.

He said, "What would be the price?" And I told him it would be 8500—it was in April or some place right after we had evolved the situation—and I told him it would be around $8500 a lane, and it came to 200, and he would have to put 30 per cent down.

He told me that was impossible, he wouldn't put that kind of money up. He said he would just transfer assets from the man who was in default. And I assured him that if he did that, he would have to pay up the delinquency, which, as I recall, was around $40,000.

Well, knowing Mr. Dankoff, he never put up the $40,000 and we never heard from him again.

[2913]

Q. Was it ever brought to your attention——

The Court: Hold it.

Mr. Hoffmann: Pardon me. May I have the last phrase repeated?

The Court: He said knowing Mr. Dankoff——

Mr. Hoffmann: I would like that stricken. There is no foundation that he knows Mr. Dankoff other than through this transaction.

The Witness: I beg your pardon.

The Court: That will be stricken, knowing Mr. Dankoff. The jury will be instructed to ignore it.

You never heard from him again, is that right?

The Witness: Yes, sir.

By Mr. McNeill:

Q. How long had you known Mr. Dankoff up to that point in time?

A. I had known Mr. Dankoff from 1957, approximately, when he ran bowling centers for his father-in-law in Rochester, New York.

Q. Mr. Rudo, was it ever brought to your attention that Mr. Dankoff offered to acquire Brunswick equipment in a center which had been repossessed, or which was about to be repossessed, on terms where Mr.

[2914]

Dankoff would pay the delinquency of the former owner and assume the balance of the former owner's contract?

A. It was never brought to my attention.

• • •

[2916]

Q. • • • Now, Mr. Rudo, did the centers operated by BCO in the United States in the first year, 1965, produce a positive cash flow?

A. In 1965, no, sir.

[2917]

Q. When did they first produce a positive cash flow?

A. 1967.

Q. I show you a copy of Brunswick or defendant's Exhibit 10 in evidence, and I ask you whether that accurately shows the cash flow experience of all of the BCO houses in the United States?

A. Yes, it does show that.

Q. Now, do you know the number of bowling centers being operated in the United States total——

A. Presently?

Q. Yes.

A. About 9,000—better than 9,000, I think it is 9500 or something like that.

I have the statistics here.

Q. Does defendant's Exhibit 25 in evidence show the number of centers operated by BCO at the year end from 1965 through 1972?

A. Yes, it does.

It shows 124 in 1965; 161 for 1966; 162 in 1967; 163 in 1968; 165 in 1969; 169 for 1970; 166 for 1971, and 168 for 1972.

Q. Without reading all of the figures, does it also show the number of centers being operated in the United States in the aggregate?

[2918]

A. Yes.

Q. What was that figure this past year, 1972?

A. 8,818.

Q. Mr. Rudo, since Brunswick BCO, has been operating bowling centers, what has Brunswick's policy been with respect to whether it would resell the equipment it has repossessed after BCO has commenced operating a center?

Mr. Hoffmann: Could we find out first if there is a policy, your Honor?

The Court: Yes. Ask him.

Q. Is there any policy with respect to that situation?

A. Yes, sir, there is.

It took us about a year to evolve that policy.

Q. What time are you talking about?

A. I'm talking about in 1965.

Q. What policy was evolved?

A. Finally we decided that we would operate a bowling center—the basic policy always is that we would sell it as a going business. The problem in 1965 was how do we really construct what was a going business, and as we got through the year and tried to relate to our customers we decided that the best way to do this

[2919]

was to operate a bowling center for a full year so that we had an operating statement that we could show someone and that we could base our facts on what was transpiring in that bowling center.

Q. Now, had you operated any center for a full bowling season by the end of the calendar year 1965?

A. Only one, and that was Dover, which was the only one we had operated really, we took it from December to the following December.

Q. Was this policy of first operating a center for a year and then trying to sell it as a going business ever deviated from by BCO?

A. Only once that I remember. That occurred in September 1965.

Q. That's before you had operated any——

A. Before we had completely operated for a year.

• • •

[2920]

Q. What were the circumstances?

A. We had been invited to attend the bowling proprietors meeting in Pittsburgh, because prior to this there had been certain allegations made by Mr. Dankoff to the Pittsburgh Bowling Proprietors Association of how we operated and what we were doing, and we were invited there to talk with these customers and tell them what was transpiring and how we were operating BCO.

Mr. Thomas, who was then the sales manager of the Bowling Division, which I had nothing to do with

[2921]

at that time, myself, Jimmy Wehrenberg from our Legal Department, Dan Scott, who was our salesman in that area, and one other man, went along, we went there and met with the proprietors.

Mr. Dankoff was in the audience, and told us in front of a lot of proprietors that we weren't really interested in selling any bowling centers.

We assured him that every bowling center we had would be for sale, and that frankly we would deviate from our policy, and we offered him any center he wanted to buy, told him we had contracts and that we would sell them to him at the used price.

And, frankly, we used very definite term to him, we told him to put his money up, and that we had contracts there, Mr. Thomas, the sales manager, was with us, and he would write the contracts.

Q. Did Mr. Dankoff offer to buy any center?

A. No, he did not.

Q. Did he subsequently after that meeting ever offer to buy any BCO center?

A. Never, to my knowledge.

Q. Now, why is it Brunwick's policy not to sell one of the centers operated by BCO until after a full year's experience?

A. Well, our early experience was that there was

[2922]

confusion as to how well the business was doing, whether it was worth it, and all this, as we talked to prospects for the bowling center.

We were new at it. We decided that if you could show someone an operating statement that showed volume of business, cost of operation, that it made—he had something that he could look at, and he could tell whether it was worth it, and therefore, we decided that rather than cause a lot of confusion and discussion, based on the operating results, that we would work out a formula, the price; we did, and that's the way we have operated ever since.

Q. How many centers which BCO has operated in the United States has it sold or otherwise disposed of for operation by someone else?

A. 11.

• • •

[2923]

The Court: It is a double question. It is really a double inquiry in one question.

How many were sold, do you know?

The Witness: Nine were sold and two were leased.

• • •

[2926]

Q. Do you know, do you have any idea of the approximate number of price quotations that Brunswick has

made in response to inquiries about purchasing one or more of the BCO centers?

A. Well, it varies yearly, but they run, I counted some, they run 50 a year. Sometimes as high as 75. One year about 30.

Q. Did any of those quotations leads to negotiations between Brunswick and a potential customer?

A. All of them did.

Q. Did any of these negotiations lead into contracts?

A. Many of them did.

Q. I mean in addition to the ones who were actually——

A. Yes, many did, and some of these were not consummated.

Q. Were any of them not consummated because of reasons beyond Brunswick's control?

A. Yes, sir.

Q. Can you cite any instances?

A. Well, Belmont Lanes in Pueblo, Colorado, was sold to Mr. Mischel, who owns 32 lanes there. He bought this based on the fact that he was going to move a trophy business to Pueblo—I mean to Belmont

[2927]

Lanes, and when he negotiated the lease with the landlord, we have a 10 per cent clause, if the volume goes over a certain amount the rent goes up by 10 per cent, and Mr. Mischel tried to get that trophy business excluded from that volume and the additional 10 per cent.

The landlord would not move. He felt it was a firm lease, and he stayed with that.

The contract was cancelled and we returned Mr. Mischel's money.

In Lido Lanes in Newark, California, American Recreation Center purchased Lido Lanes, gave us a con-

tract and could not consummate the deal because the landlord was in bankruptcy who owned the property and could not give him a long-term lease.

That contract was cancelled and we subsequently returned their money.

Imperial Lanes in Dania, Florida, sold to a bowling proprietor from Detroit, and he went to negotiate with Mr. Posner, the landlord, and the roof needed $60,000 of expense, and he had trouble consummating a lease the way he wanted with Mr. Posner; consequently he cancelled his contract——

Mr. Hoffmann: Your Honor, I ask to be excused for interrupting, but it seems obvious at least to the extent he is talking about

[2928]

Imperial Lanes he is talking sheer hearsay——

Mr. McNeill: Here is the man responsible for selling these centers. He has it sold, and he is just telling why the other guy cancelled the deal and he had to return the money.

The Court: Do you have personal knowledge of the roof condition?

The Witness: Oh, sure.

The Court: Proceed.

Q. What was the net result of the Imperial sale that you have just described?

A. Well, the customer cancelled and we returned his money.

Houston, we put a new center—Sharpstown, Mr. Fred McGee, whose father was in the business many years, and Mr. McGee owned a bowling center in Houston, took over

the location we had, he took over the real estate property that we had, that Brunswick owned, at Sharpstown, a suburb of Houston. Mr. McGee and a partner, they bought the land from us, they were to build the building and construct the new center.

Mr. McGee's partner backed out on him. This went on for nine months as I recall, and he finally couldn't get the money himself to finance this deal, and he asked for a return, and we let him out of the land

[2929]

contract, and we returned his money.

There are other examples.

Those are the ones I can recall now.

Q. Do you have any opinion as to why Brunswick has not been able to sell more of its centers at the prices which it quoted?

A. Mr. McNeill, I have here——

Q. Would you first answer?

A. Yes, I do have.

Q. What is your opinion?

A. My opinion is that there is so much used equipment of both AMF, Bowl Mor and Brunswick on the market, that people can buy for almost any price much cheaper than we will sell it as a going business, that they will buy this used equipment.

[2930]

I have ads here that have appeared since 1965 in the bowlers' journal, Bowling Proprietor magazine, I have copies of the magazines and there are ads all through these magazines.

Q. And your testimony is that the used equipment being offered for sale is at such a high price, or low price?

A. At such a low price that people will buy this. And it is this, and it cuts down from the fact that there are a lot of bowling centers go out of business.

Q. Can you describe how Brunswick arrives at a price which it will quote on one of its BCO centers?

A. Yes. I can generally because I don't use it regularly, and therefore I am not as familiar with it as I might be if I were using it regularly.

We take the cash flow of a bowling center and we project it out over ten years. We discount it for future price of money, and then we multiply that by 5.9, and that gives us a selling price.

This usually works out with a 30 per cent down to about a 15 per cent return.

Q. Return for whom?

A. For the new purchaser.

Q. Return on what?

A. On his investment.

[2931]

Q. For the purchaser who is buying the BCO——

A. Who would buy it from us, yes.

Q. Does that mean if a purchaser bought on this basis in 1967 one of the BCO centers, and then subsequently the cash flow improves, improves at the BCO center, that he will have made money on his investment, or not?

A. Oh, sure. It would have been much better, and in many cases he would have done very well.

• • •

[2932]

Q. Mr. Rudo, how many centers operated by BCO were deactivated because you were not able to develop positive cash flow?

A. 43.

Q. That's over what time span?

A. Since we started operations in 1965.

Q. And about how long did BCO operate those 43 centers before closing?

A. It varied. They would run two, three, four, five years, never—about two, three, the average were two, three, four years.

There may have been a few, one or two, that went to five.

The Court: What do you mean by "deactivation"?

[2933]

The Witness: Where we ceased to operate because we were not getting the cash flow, and we would pull the equipment out.

The Court: Then what?

The Witness: Put it in a warehouse.

The Court: Hope to sell it?

The Witness: Yes.

The Court: How about the indebtedness on the obligation once you repossessed it?

The Witness: Once we repossessed it was up to the credit department.

The Court: Incidentally, any chattel mortgages?

The Witness: Yes, depending on the state, there were chattel mortgages.

The Court: Or conditional bills of sale?

The Witness: Yes.

Q. Do you know how many centers were being operated by BCO in the United States at the end of 1972 which did not have a positive cash flow?

A. 14.

[2934]

Q. And is that indicated on defendant's Exhibit 12 in evidence?

A. Yes, sir.

• • •

[2940]

Q. What is the policy, Mr. Rudo, of Brunswick, with respect to operating centers at a negative cash flow?

A. Well, our basic criteria that we set up originally was to get them in a positive cash flow in two years, if possible, based on, really, our judgment, and as the head of the division, and then profitable in the third year. And our management has been very happy with the results.

Q. And what is the net amount of positive cash flow that these centers contributed in 1972; do you know the figure?

A. $8,000,000.

Q. What has been the net aggregate cash flow, positive, that these centers have contributed?

[2941]

A. Twenty-two million since it started.

Q. That's also taking into account the first two years that are negative?

A. Yes, sir.

Q. Now, do you consider the $22,0000,000 to be—

A. I didn't add them up. It's about twenty-two million—

The Court: Is it your testimony that BCO vis-a-vis Brunswick has netted about $22,000,000—

The Witness: Yes, sir.

The Court: —since they started in this business; right?

The Witness: Yes, sir. That's cash flow.

The Court: Cash flow, right.

Q. Do you consider the $22,000,000 to be salvage which BCO has created for Brunswick by the operation of bowling centers?

A. Partially. It does not completely salvage our losses; no, sir.

Q. I think it has been suggested at this hearing that when Brunswick talks about operating BCO centers as a salvage operation, it means that BCO is going to operate a center only long enough

[2942]

to get out of it the unpaid balance of the former operator's purchase equipment contract.

Mr. Hoffmann: Your Honor, I object to counsel's thoughts as to what may have been testified to. He prefaces his question by saying: I think that has been the testimony in this proceeding. If he knows and can supply a page reference, I have no objection, of course.

But if he merely thinks this has been the testimony—

The Court: Is it your testimony? Rephrase it.

Q. Is it the policy of Brunswick to operate BCO centers only until the unpaid principal balance on the prior owner's contract has been recovered?

A. That has never been our policy. I have never really known what the previous balances were in many cases—in most cases. Our policy was to rehabilitate these centers, to make them a profitable going business, so that we could resell them to bowling proprietors.

The Court: Or retain them.

The Witness: Or retain them.

Q. Is that what is meant by salvaging?

[2943]

A. Yes, sir; as far as we are concerned.

Q. Has Brunswick constructed any new centers, or put equipment in new locations, and opened a new BCO center?

A. Yes, sir.

Q. How many times has it done that?

A. We have seven of them.

The Court: In how long a period, Mr. Rudo?

The Witness: We had our first one—in October 1969 we opened our first one in Chicago Heights. The last one we opened was in July of '72, sir.

• • •

[2944]

Q. Were you aware of it each time that one of these centers was opened?

A. Yes, sir. I must submit a project to our corporate management and then have them approve the capital expenditure.

The Court: Were you there?

The Witness: Was I there? You bet.

Q. Do you have a list there, a memo that identifies all the centers which Brunswick's BCO has opened?

A. Yes, sir; I do.

Mr. McNeill: Let's have it marked for identification.

The Court: What's the investment, do you have any idea?

The Witness: In each?

The Court: No, in aggregate.

Mr. McNeill: I'm sorry. What was the question, your Honor?

The Court: How much invested, in aggregate, if he knows?

The Witness: Around six and a half million dollars, your Honor. Around $6 million, because in some places we do not own the property, we only lease it. And therefore I am taking the selling

[2945]

price of our lanes and pinsetters at retail on this, the price in which they go in.

The Court: All on a positive cash flow?

The Witness: Yes, sir.

(Exhibit D-40 marked for identification.)

By Mr. McNeill:

Q. Was it new equipment or repossessed equipment that was put into these centers when they were opened?

A. To my knowledge, they were all—except for some lanes, the pinsetters were all used. There may have been some lanes that may have been new.

Q. You mean the wooden alleys?

A. The wooden alleys; yes, sir.

Q. Will you read from that memorandum, which now has been marked Defendant's Exhibit 40 for identification, the identity of each of these seven new centers?

A. We have one at Western Bowl—which we call Western Bowl at Chicago Heights, Illinois; Northern Bowl in Glendale Heights, Illinois—

Q. Give the dates, please.

A. I'm sorry.—which was started in September 1970; Wayne Recreation in Fort Wayne, Indiana, October 9, 1970—these are when they were opened—Sharpstown Lanes in Houston, Texas, which was opened in April of

[2946]

1972; Orange Bowl, which was opened in Orange County, California, in July of '72; Carrollton Bowl, which was opened in June '71; and Northeastern Bowl, which was opened in July of '72.

We have one other establishment that burned down that we rebuilt. I don't consider that a new one. But it is in Dover, Delaware. It was the first bowling center we took in repossession. And the only reason I have put this on the list is that when we rebuilt it we added eight lanes to it. Instead of being 24, we made it a 32-lane center. It really is not a new one, but the building has been rebuilt, and we have reopened it, and we do operate it. And that was reopened—it was closed about a year—we opened it in September 1971.

Q. Mr. Rudo, did Brunswick do anything prior to opening those centers, each of them, to determine whether or not its location would be injurious to existing bowling centers?

A. Oh, absolutely.

Q. What was it that you did?

A. Well, we had a policy—we have an organization that is set up to screen markets in the United States which have a potential for a bowling center. And they report back on this. These locations are set up and turned over to the sales department. And that's on the

[2947]

opposite side of our business. And the sales manager is given that area and told, "This looks like it has a good potential. Go find a customer." And he has six months to do this.

At the end of six months, if he has a prospect—or during the six months—he should sell it; if not, we then consider it for a BCO. Sometimes we do install a BCO and sometimes we don't.

Q. Now, does Brunswick do anything once it has not been able to find a customer, and it acquires rights in the land, does it do anything further before it begins construction, as far as trying to sell the idea to someone else?

A. Well, if they should come across a prospect, we will consider that prospect. And usually we will quote the cost of the land, and whatever other expenses, plus 15 per cent to cover our overhead. We haven't had any—well, we had one situation like that, early, at Western Bowl, and the man could not get financing for the building, to build a bowling center, in '70, when there was a tight credit crunch, and that never was consummated.

Q. With respect to those new centers you described, were searches made in each instance for independent proprietors to open a center there them-

[2948]

selves?

A. I have a dossier here on each one of them and who we contacted. And in every case—in Fort Wayne we

made 16 contacts to find a prospect who would take over that location, and either they were not interested, or ran into—couldn't finance the building.

In Western Bowl we had four, two of them existing proprietors.

In Orange we have a tentative contract with a—when I say "tentative", because there is no money, and the man is interested.

In Sharpstown we have a letter of intent from a very well known person in the bowling business.

But these are not contracts. In every case we have—I have a prospect list, who was contacted and what is the situation. We try to sell them before we go in. And they are for sale a year after we operate it, every one of them.

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[2950]

Q. Mr. Rudo, has the construction by Brunswick, the opening of these new centers, precluded independent bowling proprietors from subsequently opening new bowling centers of their own in the same competitive areas?

A. No, sir. In Western Bowl, in Chicago Heights, there are two new centers being built within a three or four mile radius, one of 16 lanes—two of 16 lanes.

In Northern Bowl—

Q. Excuse me for interrupting. What is the BCO center in that competitive area?

A. Western Bowl.

Q. When was that opened by Brunswick?

A. In 1969. And we have two new centers being built there right now. And these two people are buying Brunswick equipment.

We have contracts for these centers.

Q. And Brunswick is selling equipment to them?

A. That is correct. In Northern Bowl, in Glendale Heights, Illinois, within two miles——

Q. First of all, what is the Brunswick center in that area?

A. Northern Bowl.

Q. When was it opened?

[2951]

A. In 1970.

Q. And subsequently, what has happened?

A. Well, two bowling centers have been built there and they are in operation, one by some bowling proprietors in Chicago, who have four other places, are building a new center—that have been in operation for a year; they took over an old building that had a bowling center, and they put in—they made an addition to it—it was a 16-lane center, and they made it a 26-lane center—and have operated it for a year.

And this year they are adding 12. Brunswick sold them lanes and pinsetters for that installation. Within this same market there has been another—a Carroll Stream—I think it is Streamwood, Illinois——

Q. How do you spell this?

A. Carroll Stream. I think it is in Streamwood, Illinois. I have it listed here exactly. A 32-lane center opened last summer, complete with brand new Brunswick equipment, lanes and pinsetters, and scorers, and are in competition to Northern Bowl.

In Sharpstown——

Q. What is the Brunswick center there?

A. That's what we call Sharpstown Lanes. In Houston——

[2952]

Q. When was it opened?

A. It was opened in April of '72.

Q. And it was a new installation by Brunswick?

A. A brand new installation by Brunswick.

Fair Lanes has announced—it was a chain operation out of Baltimore—to build a new center within two miles, or two and a half miles. They have announced it. I have the newspaper clippings in my briefcase here. A new center there.

And they have announced two other new centers in the Sharpstown market.

In Orange Bowl, which is in Orange, California, which we opened in July of '72, there is a new center opening in—I don't know whether my pronounciation is correct—in Meijo, California——

Q. How do you spell that, do you know?

A. M-e-i-j-o. Meijo Valley. I think it is. This is an AMF installation. Ground has been broken and a new bowling center is going in Orange County.

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[2955]

Q. Mr. Rudo, are these new centers, opened by Brunswick, for sale?

A. Yes, sir.

Q. And are they for sale on the same terms as the BCO centers which Brunswick began to operate after repossessing the equipment in them?

A. Yes, sir.

[2956]

Q. Have you attempted to sell any of these new centers that have been opened?

A. Yes, they are for sale. And as I indicated to you, we get inquiries on them. We have right now, and I

have a copy of the letter with me, of intent by an old or very well known figure in the bowling industry who wants to buy Sharpstead. The deal is not consummated, but it is a potential deal.

The Court: You're telling this jury in the year 1972 there were 168 bowling centers operated by BCO according to Brunswick Exhibit 8; is that right?

The Witness: Yes.

The Court: Are you telling this jury they are all for sale?

The Witness: Yes.

The Court: On competitive terms?

The Witness: Yes.

The Court: Competitive financing terms?

The Witness: Yes, sir, every one of them.

Q. How many new centers at the most does Brunswick expect to build in the United States in the near future?

A. Our plan is to build approximately four or five, as we find markets, and if we do not have——

The Court: Per year?

[2957]

The Witness: Yes.

Q. Is this going to result in the increase of total number of centers owned and operated by BCO?

A. Well, my own opinion is it would be a very nominal increase because I think as time goes on more of our centers will be sold.

The Court: You are going to build more?

The Witness: No, our intention is to build them and sell them if possible.

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[2968]

Q. Now, Mr. Rudo, with respect to areas where

[2969]

BCO operates centers in the United States, after having repossessed its equipment, as opposed to the new centers it opened, are there any of those areas where independent proprietors have opened new centers, or expanded existing centers, after Brunswick started operating?

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[2970]

A. Yes, sir.

Q. About how many such areas are there?

A. Over 40 in the United States.

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[2975]

Q. • • • Mr. Rudo, does BCOD operate some centers under a management contract?

A. Yes, sir.

Q. And how many such centers are managed by BCO?

A. Approximately 30.

Q. Now, does Brunswick have under those management agreements any option or other right to purchase the managed centers?

A. No, the only one I knew of was one that I testified to in this court, and that has been dispensed with, we have sent the letter that we would never exercise the option.

Q. You are talking about Rahway?

A. Rahway deal, yes.

Q. With respect to all management contracts is it your testimony that there is no such Brunswick

[2976]

option to purchase?

A. Yes, sir, there is no such Brunswick option to purchase.

Q. What is Brunswick's purpose in managing centers for others?

A. Well, we have developed some skills and some expertise in running the centers.

People have come to us who want to buy centers and would like not to manage them but just be investors, and they have asked to manage.

This has gone on for 20 years that I know of, but we have just recently had that expertise, and then also there are some people who have gotten old, who have purchased lanes and pinsetters back in the late '50's and early '60's who don't want to work as hard evidently, and many of them have come to us to manage them.

In fact, last summer I got such a call.

Q. About how many such centers are operated by Brunswick?

A. About 30. It varies a little bit, occasionally.

Q. Mr. Rudo, changing the subject, going to Pueblo, Colorado——

A. Yes.

Q. —what part, if any, did you play in the

[2977]

sale of Brunswick equipment to the operators of Belmont Bowl in Pueblo?

A. Well, as head of the division I would not have had authority to approve credit, but I would approve the final aspects that we would take the contract from the sales and marketing point of view and submit it to credit.

Q. Can you explain how the orders are taken within Brunswick and who decides if they will be accepted?

A. Well, back in the days when these were being sold each region and branch, we had branches in those days, had what they called a sales engineer. It was his job to sell bowling centers.

He and his branch manager would work on them. They would make surveys that had to pass sales, sales and marketing approval in Chicago, in the home office.

They also had these surveys, had to be approved by the credit department, who were not under the bowling division. They were a separate operation.

Q. The credit department operated autonomously?

A. Absolutely. Absolutely, they reported to the financial department, not to the bowling division.

And after the salesman got all his data together and had a contract signed with down payments, he would

[2978]

submit it to the order department in Chicago where we would review it and in most cases I got involved.

Q. Now, did you get involved before, or after, credit approval and before, or after, any legal approval?

A. Well, in most cases it was before credit approval——

Mr. Hoffmann: I am going to ask that this question be stricken and properly phrased.

He now puts in before or after credit or legal approval. I didn't remember any of that in this witness' prior testimony.

He has asked a question in point of time, did his participation take place before credit and legal approval, and it assumes, as so many of his questions do, that such approval took place.

There is no foundation for it, your Honor.

The Court: I am going to sustain it. Rephrase it.

Ask him what happened. When did he come into the picture at Belmont.

Q. When generally did you come into the picture in those days with respect to salesmen's orders?

A. I came into the picture before either the credit department or legal depar

[2979]

Once we approved, it was sent over to them, and then it had to pass their muster.

Q. When did it first come to your attention that a Brunswick salesman had taken an order for a new center which subsequently became Belmont in Pueblo?

Mr. Hoffmann: I am going to object to that one, too, on the ground that it is leading.

The Court: No, I will permit it.
Answer it. When?

The Witness: Early 1961.

Q. And can you recall the circumstances when this first came to your attention?

A. Yes. Mr. Lieblich, who was head of National Bowl-O-Mat, called me on the phone, and we discussed the situation in Pueblo. He was quite concerned that a

new bowling center was going in there, as his place had not done well, and he wanted us not to sell to these new people who were going in.

Q. And did you participate in any decision at that time either accepting or rejecting the order of this equipment?

A. Yes, I did.

I discussed it with the sales manager and with our field sales people, who insisted that the location was good, Pueblo could take the bowling center.

[2980]

Because of Mr. Lieblich's protestations and the fact that he felt that he had done as well as he thought he should, I rejected the order, would not take it.

Q. Were there any qualifications with respect to your rejection at that time?

A. No, sir. I felt at that time maybe we ought to see what transpired, and if he could do better, we might consider it in the future, but there were none as far as this was concerned.

Q. Did you ever again become involved with this—with Brunswick selling equipment to the center which became Belmont?

A. Yes, sir. Late that fall in October, Mr. Bonforte, who was going to build the center, he told me that he knew that Mr. Lieblich had been to us, and then to AMF, and that he felt that we had to sell him, and he felt that this center would go, and he was going to build it.

Q. Who again was Mr. Bonforte?

A. Bonforte was the man who was going to build the center, and to my knowledge was the prospect that we were going to sell to.

Q. What happened next?

A. Next thing I know is early in 1962 I have received a call from Mr. — when I say "early," January,

[2981]

late—maybe even late December—from Mr. Lieblich telling me that he heard that this had been revived and wanted to know my position.

I told him that I might we might have to sell, but I wanted to consider it, and I sent other people out there to do some survey work.

Q. Out where?

A. Out to Pueblo.

Q. Was there any further communication between you and Mr. Lieblich about this subject?

A. Yes, he came in to Chicago, and we discussed it further, and he felt that he had a commitment from AMF and Brunswick that we would not sell to this center, and that the town couldn't take it.

I had further surveys made which indicated that it could take it, and then I had some survey from one person who indicated that maybe there was some doubt.

I went to our legal department and covered the entire circumstances of the various calls I had gotten from and visits I had had from Mr. Lieblich and conversations I had had with Mr. Bonforte, and I apprised them of what was transpiring.

[2982]

Q. What was your feeling at that time as to whether Belmont could operate profitably?

A. I felt that a center would go in Pueblo, but I felt under the—that it would be a difficult situation for us not to take it.

I also was concerned with Mr. Lieblich. I didn't want to see him fail or his organization fail; we never do.

After consultation with the Legal Department later in the Spring, they felt we had to sell this, and we signed the contract.

I sent our promotion people in the Spring of 1962 to Pueblo, and they were some three months in the Pueblo Bowl-O-Mat to try to help this business.

Reports I got back were that they did help it. They did get a number of leagues and a number of bowlers.

The Pueblo Bowl-O-Mat did seem to be improving. Belmont Bowl was installed late and opened in August or September 1962—

Q. Let's back up for a moment. Before you finally approved the contracts for Belmont, did you do anything to try to talk the promoters of Belmont out of going ahead?

A. Yes. I indicated I had sent other people out

[2983]

there.

I had sent Mr. Blanks out, who talked to both Mr. Lieblich and also to the promoters of this bowling center, and he tried to talk them out of it.

They said they would not be talked out of it, that if we didn't want to sell them, they could get equipment from AMF or Bowlmore.

Q. Do you know, in fact, Mr. Rudo, whether AMF or Bowlmore were trying to sell equipment to the promoters of Belmont?

A. No, I do not, I don't know what the report was.

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[2984]

Q. What were the factors that you took into account in approving this order?

A. We took into account the evaluations and analysis that had been made, we took into account the fact that we had been successful in helping Pueblo Bowl-O-Mat promote more business which indicated to us that there was business there, we took into account the fact that these people were going ahead and that AMF or Bowlmore possibly could sell them.

The biggest fact that made us approve it was the fact that our Legal Department said we should base on what had transpired in Lieblich's conversations with us prior to this sale.

Q. Do you know when the equipment contract for the Belmont sale was actually signed?

A. Late Spring of 1962.

Q. And who were the operators to be at Belmont?

A. The operators were National Bowling Centers, as far as I'm concerned, the only people I know about

[2985]

were Mr. Bonforte.

Q. What was the name of the other organization—

A. National Bowling Centers, I think, was the name of the corporation.

Q. Did you know anything about that entity at all?

A. Very little, very little.

Q. Did Brunswick choose this National Bowling Centers, or whatever the proper name was, as its customer?

A. No, sir, we did not. These were Mr. Bonforte's clients.

Q. Mr. Rudo, were you involved in any subsequent event, subsequent to the opening of Belmont, insofar as as non-payment on the obligation to Brunswick is concerned?

A. No, that was basically a Credit Department, except that it must not have paid, because we eventually evaluated it years later and took it over in the BCO operation.

Q. Do you know when that was that BCO commenced operating Belmont?

A. 1965, if I recall.

The Court: Why?

[2986]

The Witness: Why did we take it over?

The Court: Yes.

The Witness: Because after its evaluation we felt that, and the operation, in knowing the town, that we could make it successful.

The Court: What happened with the relationship with Belmont, with Bonforte?

The Witness: Well, Bonforte never was in it.

The Court: Bonforte's clients.

The Witness: He evidently did not pay. This thing came through the Credit Department as a bad risk and it went to our Evaluation Department in 1965, and we went, took it over, and operated it.

The Court: You mean repossessed?

The Witness: Repossessed, yes, I'm sorry.

Q. Did you have an opinion in the Spring of 1965 as to whether Brunswick could operate it successfully?

A. Yes, sir, I did.

I felt we could.

Q. When you say operate successfully, what do you mean by that?

A. Well, I felt we would get a positive cash flow

[2987]

out of it.

As I recall, the first year we did. The second year I think we did.

And the third, fourth and fifth year we did not.

But we—then, the last two or three years, it's been very profitable.

Q. Mr. Rudo, was it your purpose in whole or in part to injure Pueblo Bowl-O-Mat by keeping Belmont in operation?

A. Absolutely not.

Q. Mr. Rudo, to your knowledge, has it ev been a plan or purpose or design of Brunswick to take over and operate Pueblo Bowl-O-Mat or any other bowl-o-mat center?

A. No, sir, it has not been our design or idea or thought. We preferred not to take it over. We basically would prefer that the customers would continue their operation and be successful.

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[2993]

Q. Mr. Rudo, is there any BCO center presently operating which you would buy at Brunswick's asking price?

A. Yes, sir; Fort Lauderdale, Lauderdale Lanes. I think it is an excellent one.

Q. Do you have any idea what the price would be?

A. No, I have not.

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[2996]

Q. Mr. Rudo, in your opinion, what part does competition play on the success or non-success of a bowling center?

A. Well, are you talking about competition of other bowling centers?

Q. Yes.

A. I think it is a very minor factor, that if you run—have a good location, and if you run your bowling center properly, keep it clean, and you promote it, and you really work at it, and make—work at your bowling business—and I think the best example of that is right here in Paramus, where there are three centers, and the most successful one is run by an independent, who seems to go on and make money and do well.

Q. And what are you referring to, who are you referring to?

A. I am referring to Paramus Bowl.

[2997]

The Court: Mr. Esposito?

The Witness: Mr. Esposito's bowling center.

Q. Mr. Rudo, changing the geographical focus again to Poughkeepsie, New York, do you know approximately when BCO commenced operating Dutchess Lanes at Poughkeepsie?

A. It was either in '65 or early '66.

Q. Did you have an opinion at that time as to whether Brunswick could operate that center successfully?

A. Yes, sir; I did.

Q. What was your opinion at that time?

A. Knowing Poughkeepsie, because I had worked there, I felt that it could be successful. It was not one of

the better centers we took over, but I felt that it had a good chance.

Q. What things did you take into account in forming that opinion?

A. Well, having some knowledge of Poughkeepsie, having worked Westchester County, knowing the Levines —they had had that center, it had burned down—and, just generally, it had been a good bowling area.

Q. Who had been operating Dutchess prior to Brunswick taking it over?

[2998]

A. Well, just immediately prior, Mrs. Levine and her daughter had been operating it. Prior to that, a chain had been operating it. And they just walked away from it.

Q. Mr. Rudo, that center lost money, didn't it?

A. Yes, sir.

Q. And Brunswick closed it down, took out its equipment?

A. Yes, sir.

Q. Why did Brunswick operate it for as long as it did, losing money?

A. Well, because we had felt that it would be good. When I consulted with my operating people, they told me that they felt it was management, after the first two years. And they put a new manager in and the results didn't change.

Bowling was evidently good in that town, because two of the bowling centers—Touponse expanded, and Mardi-Bob expanded while we were operating that center. Those two centers are closer to Wappingers Falls than Dutchess, by a long shot.

Q. Do you have an opinion now as to why Dutchess Lanes didn't work out as you had hoped?

A. Yes, sir; I do.

[2999]

Q. What is that?

A. I think it was located badly, and, as is the case in most towns today, downtown had deteriorated, people don't go downtown as much, even in small towns—smaller towns.

Q. Did anything in particular happen in downtown Poughkeepsie during the middle 60's?

A. Well, parking was very limited with this center. I don't know of anything specific; no, sir.

Q. Mr. Rudo, have Interstate Lanes in Ramsey, New Jersey, and Fair Lawn Lanes in Fair Lawn, New Jersey, been profitable under BCO operation?

A. Very.

Q. Do you know whether the trend has been in any particular way, the profit?

A. Generally, the profits have gone up in both the centers.

Q. Mr. Rudo, are Fair Lawn Lanes and Interstate Lanes for sale?

A. Yes, sir; they are.

Q. Are they for sale under the normal terms as you described the other day in your testimony?

A. Yes, sir; they are.

Q. Were they for sale in 1970?

A. Yes, sir; they were. And I offered them for

[3000]

sale at that time—

Mr. Hoffmann: Your Honor, may the witness be confined to answering the questions?

The Court: Yes. They have been since 1970. What is the next question?

Q. Mr. Rudo, have you ever offered Fair Lawn Lanes for sale?

A. Yes, sir; to Mr. Lieblich.

Q. When was that?

A. In 1970.

Q. What did you say to him and what did he say to you on that occasion?

A. On that occasion I told him if he was really interested in buying Fair Lawn, I would be glad to work up a quote for him. He just ignored it and walked away from it.

In fact, it was right out in this hall, right out here. Later, in some testimony I gave, I offered it at that time.

Q. Mr. Rudo, do you know what BCO would have quoted Fair Lawn Lanes to Mr. Lieblich at in 1970?

A. Yes, sir; I do.

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[3001]

Q. Mr. Rudo, in the Spring of 1970, was there any formula being used by BCO for quoting price on a bowling center operated by BCO?

A. Yes, sir; there was.

Q. What was that formula?

A. We took the cash flow, projected it over ten years, with a three percent increase each year. We then developed a cash flow, took a discount for the future price of money, then we multiplied it by .59, and that gave us the selling price. I testified to this the other day.

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[3003]

Q. Do you know when Brunswick commenced operating Ten Pins on the Mall?

A. 1968 as a management contract.

Q. And how long did it operate under this management contract?

A. One year.

Q. Has it operated Ten Pins on the Mall since that time?

A. Since September 1969 as a repossessed bowling center, yes.

Q. What results has Brunswick achieved in the operation of Ten Pins on the Mall since September 1969?

A. We had a positive cash flow ever since we have been there.

Q. Do you know when Brunswick took over the operation of Lodi Lanes in Lodi, New Jersey?

A. In 1970.

Q. Do you know what the results of Brunswick's operation of that center have been?

A. First year we had a small loss, second year we had a loss, which was 1971, and 1972 was a very large loss, and in May 1973 our lease is up, and when our lease is up we will no longer operate Lodi, New Jersey.

Q. When you say your lease is up, are you talking about your lease on the real estate premises?

[3004]

A. Real estate and equipment.

The Court: Wasn't your equipment in there?

The Witness: No, that—I don't know, I don't know what kind of equipment is in there, your Honor.

Q. Did you repossess the equipment in there, do you know?

A. No, we did not. That was leased equipment.

Q. So BCO was operating pursuant to a lease?

A. For someone else, yes.

Q. Do you have an opinion, Mr. Rudo, as to why Lodi Lanes did poorly in 1972?

A. Yes, I do.

Q. What is your opinion?

A. Certain cases when we have taken over and operated for someone else, it is their investment, and instead of—no two people would operate the same, and we have had certain cases where it just has not been compatible, and we feel that this owner did not give us, this owner of the equipment did not give us the leeway to operate and we feel it is better for all concerned.

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[3018]

Q. Mr. Rudo, did you ever tell Mr. Lieblich that you believed that a ratio of 1400 persons to one—1400 persons per bowling lane was necessary for a successful operation of a bowling center?

Mr. Hoffmann: It is leading, your Honor.

The Court: I will permit it.
Did you ever tell him or no?

The Witness: No, never did.

Q. Do you know whether any other Brunswick representative ever told Mr. Lieblich that?

A. I wouldn't know that.

The Court: Are you sure?

The Witness: The fact that I didn't know, yes, I'm sure.

Q. Has Brunswick ever refused to make such a statement when it was asked to do so?

A. Yes, sir, we have refused.

Q. What were the circumstances?

A. Well, in 1960 Bowling Proprietors Association of America was trying to get AMF and Brunswick particularly to commit of a lane ratio per population.

Our company has never felt that such a lane ratio existed. My first education when I went to work for

[3019]

my father back in 1940, he used at that time a thousand people per lane.

But in my own experience, I have found that it varies according to the country. In the South, it would be more. AMF—

[3020]

Q. What do you mean, in the South it would be more?

A. Well, in the South, because of the weather and other conditions it seems to me that a higher ratio of people per lane would be necessary.

Q. Necessary for what?

A. For a successful bowling trend, whereas in the North it could be less.

I remember when in about 1963 I ran a study, Omaha, Nebraska, ran about 300 people per lane, and Rochester, New York, ran about 500 people per lane.

So it varies, there is no definite, can't be—

Q. With respect to those two studies in Omaha and Rochester, were centers successful under those conditions?

A. There has been to my knowledge, there has been very little closing or repossessing in either one of those two towns.

In fact, I can't think of any.

Mr. McNeill: I'd like to ask the reporter to mark for identification these seven booklets as Defendant's Exhibits 41, 42, 43, 44, 45, 46 and 47 for identification.

I will identify each one of these booklets. 41 for identification is entitled "Let's

[3021]

Talk Facts."

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[3023]

The Court: Don't read them.

Q. Mr. Rudo, mindful of the Court's caution and suggestion that these booklets are not to be read, nevertheless can you identify just generally what Brunswick did in preparing each of these booklets and

[3024]

what the gist of what was said was?

The Court: I will permit that.

A. "Let's Talk Facts" is a booklet that was published in 1966, and it was basically to tell the bowling industry why we went into operating of bowling centers and telling the industry what our policies were.

In this book we stated our firm price policy, a firm down payment policy, a 30 per cent down, we discussed how BCO would operate along the 14 points which I testified to, and that we would—we had legal and ethical guidelines, and that we would handle and would pay list prices in BCO for all of the merchandise it bought from Brunswick, and that we would publish our experience as time went on.

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[3032]

Q. What did you tell the proprietors in 1970?

A. We indicated to them that we had become successful, the centers were moving ahead, and business was becoming profitable, and there were cash flows in most of the centers.

[3129]

Q. Mr. Rudo, during 1965, were the centers which Brunswick purchased at the AIBC bankruptcy sale for sale by Brunswick to others?

A. Not in 1965, no, sir.

Q. Why not?

A. Because it had not been finalized by the Court, in the releases, I recall didn't take place until 1966.

Q. When you talk about releases, what is your understanding of that?

A. Where it cleared—it is my understanding that the Court then released them, that they belonged to us completely, and it was—we then had full title to them.

Q. The bankruptcy court?

A. Yes, sir.

Q. Did you advise persons who inquired in 1965 of that fact, about the bankruptcy proceedings for

[3130]

the AIBC centers——

Mr. Hoffmann: Objection. There is no indication that persons inquired about them.

The Court: I will sustain that. No foundation for that.

Q. Did persons inquire about any of the AIBC centers during 1965?

A. Yes, sir.

Q. Did Mr. Lieblich inquire?

A. Yes, sir.

Q. Now, did you advise any persons who inquired during 1965 about the pendency of the bankruptcy proceedings?

A. Yes.

Q. And Brunswick's inability at that time to offer clear title?

A. Yes, sir.

Q. Now, when did this situation end again?

A. In 1966.

Q. At all times thereafter were the former AIBC houses for sale on the same terms as other BCOD centers?

A. Yes.

Q. Do you recall correspondence with Mr. Rudo in April or May of 1965 concerning Bowl-O-Mat's possible

[3131]

purchase of Fair Lawn—

A. Mr. Rudo?

Q. I beg your pardon, did I misspeak?

Let me rephrase that question.

Do you recall any correspondence between you and Mr. Lieblich in 1965, April, May, concerning Bowl-O-Mat's possible purchase of Fair Lawn?

A. Yes.

[3132]

Q. What is the net result of that correspondence?

A. As I recall, it was a matter of advising him that they couldn't be for sale because the matters had not been cleared up; and as soon as they were, as soon as I had releases to sell them, they would be for sale.

Q. Did he ever come back to you and ask for quotes on Fair Lawn?

A. Not that I know of.

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[3133]

Q. Since that time in 1965 have you ever indicated to Mr. Lieblich that Fair Lawn was for sale?

A. As I stated earlier in my testimony, on two occasions, once in this building—twice in this building.

Q. When was that?

A. Once on an examination in 1970.

[3134]

Q. In the spring of 1970, was that?

A. Yes, sir.

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[3136]

Q. Mr. Rudo, are you familiar with the Complaint that has been filed in this litigation by the plaintiffs against Brunswick?

A. Generally, yes, sir.

Q. It is alleged in Paragraph 52 of the Complaint that Brunswick charges low rentals and offers many inducements to bowlers which other operators of bowling centers, who lack the large financial resources of Brunswick, cannot afford to charge, or offer, for as long a period of time as Brunswick can.

Brunswick does so with the purpose and effect of weakening and excluding competition in the market in which it operates bowling centers.

Is that true?

A. No, sir; absolutely not.

Q. Why not?

A. Our intention in operating BCO centers was to make a profit, was to make them viable businesses, so that they can be sold. It is our desire to sell these things,

[3137]

these installations, and it is also our desire to see the bowling industry strong.

Q. What about charging low prices at the centers?

A. I think we have testified that we don't charge low prices. I know our policy. Our policy is to raise prices generally when we go in, or at least maintain them, and to be at the high end of any market we operate in.

The Court: How about low rentals?

The Witness: Low rentals?

The Court: Yes.

The Witness: I don't know what that means, your Honor.

The Court: He just read it to you. You don't understand, you mean, the allegation?

The Witness: Yes, sir. I don't know what low rentals mean. We don't charge low rentals, except where we might rent equipment. And there we compete against other people who rent equipment, and our rental costs are competitive.

By Mr. McNeill:

Q. When you talk about low rentals being charged to bowlers, do you understand that to mean prices for bowling?

[3138]

A. I don't understand what that means. I never heard the term used, rentals to bowlers.

[3139]

The Court: You're telling this jury, though, if it does mean rentals for equipment, your rentals are competitive?

The Witness: Yes, sir, if that's what it means.

Q. Is it Brunswick's purpose to weaken competitors and independent bowling proprietors?

A. Absolutely not. My division of business is basically to sell equipment and supplies, and the biggest part of our business is that. We certainly would be stupid to weaken our customers, and we do not.

Our own record, I think, in that part of our business, indicates that other bowling proprietors don't feel that way because our business has increased.

Q. Paragraph 52 of the Complaint states as follows:

"Brunswick absorbs losses in its operation of bowling centers which could not be absorbed by operators who lack the large financial resources of Brunswick and does not close such centers, with the purpose and effect of weakening and excluding competition in the market in which it operates bowling centers."

Is that true?

A. Absolutely not.

Q. Why not?

[3140]

A. I think the record speaks for itself as to what is going on in the country. We have had losers early in the game. We have worked hard and diligently, our people have, to make them profitable, our record of having only 14 last year, and many of them will be profitable in 1973, and the fact that other people go into competition with us where we presently exist certainly doesn't indicate that they fear us or think that we have any ulterior motive.

Q. Mr. Rudo, it is also alleged in the Complaint in Paragraph 54 that,

"Brunswick is able to install the most modern equipment in its bowling centers, including A-2 devices which Brunswick's competitors for the most part are unable to afford," is that accurate?

A. Well, no, sir, it is not.

23,000 A-2 kits have been sold to bowling proprietors in the United States.

In addition to that, there are three competitors I can think of offhand who sell a kit similar to ours for much less money than ours. Fast ball return out of Texas is made for the A-1 machine, and it is owned by a group of bowling proprietors in that area.

The QBR, quick ball return, out of Spokane, Washington, also a bowling proprietor developed this,

[3141]

and is selling it in the market.

And Zot, out of Denver, Colorado, all of their units sell, our unit I guess—one unit we have sells for about $1,600, another unit we have sells for $1,195, all of these units sell for six to $800, and they have terms and other means, and they have sold these products in the market, and have been selling them for a number of years.

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[3142]

CROSS-EXAMINATION.

By Mr. Hoffmann:

Q. By the way, sir, just on your last answer or question, when did Fast Ball come on the market?

A. In the late 60's.

Q. How late in 1960?

A. I can't tell you.

Q. Very late, wasn't it?

A. I don't know what you mean—

Q. Say 1969?

A. I don't know.

Q. You don't know?

A. No, I would think it was earlier than that.

Q. Do you know how much of it has been sold, how much Fast Ball has been sold?

A. No, sir.

Q. Could be one unit, could be 10,000 units?

A. I would doubt that because they show at various state conventions, and I would guess many more than that.

Q. Many more than one?

A. Yes, sir.

Q. That's a guess of yours, is that right?

A. That's right.

[3143]

Q. You don't know is the answer; isn't that right?

A. No, sir.

Q. You don't know how many have been sold; is that right?

A. I do not know exactly.

Q. You don't even know approximately, do you?

A. No, sir.

Q. No. And when it comes to the Quick Ball Return that you said was put on the market by another proprietors, what do you mean, how many of those have been sold in the United States?

A. Oh, well over 100 that I know, about—

Q. Do you know that they sold more than 100 of those, that would take care of 100 bowling lanes?

A. I would guess that they sold many more than that based on—

Q. Guess, I asked you what you know. Do you know whether they sold more than 100?

A. Mr. Hoffmann, I don't get their records, but I do get to conventions and I do see them in action.

Mr. Hoffmann: Your Honor, may I have a yes or no answer?

The Court: The answer will be stricken as irresponsive.

[3144]

Do you know whether they sold more than 100 or no?

The Witness: No.

Q. What do you know about Zot, do you know what it is?

A. Zot?

Q. Yes.

A. Yes, sir. They have many devices.

Q. Just a second. Is there a Zot machine which is—

The Court: What is it, Z-o-t?

The Witness: Z-o-t.

Is there a Zot machine which is the same or serves the same purpose as the A-2?

A. Yes, sir, as A-2 kit does, yes.

Q. Not the A-2 machine, but the A-2 kit?

A. Yes.

Q. Do you know how many Zots have been sold?

A. No.

Q. Could have been one?

A. I don't know, could have been thousands.

Q. Could have been one, though, because you don't know?

A. Could have been thousands.

The Court: Argumentative. Next question.

[3145]

The Witness: They advertise a lot.

The Court: Let's keep it cool, everybody, including you, Mr. Rudo.

The Witness: Yes, sir; yes, sir.

The Court: He even says that twice, yes, sir.

The Witness: Just for emphasis, your Honor.

Q. Mr. Rudo, do you have any recollection of participating in proceedings before the executive committee of the Bowling Proprietors Association of America at the Sheraton Hotel in San Juan, Puerto Rico, on June 22, 3rd and 6th, 1965?

A. Yes.

Q. Do you know what that committee consisted of?

A. As I recall, it was the executive committee of the Bowling Proprietors Association of America—

Q. Do you have any recollection of having addressed that committee at that time?

A. I didn't make a formal address, but I spoke with them, yes.

Q. I read to you from what purports to be minutes of that committee, and the chairman is talking, Chairman Goldberg is saying:

[3146]

"We are going to skip over our usual procedure of roll call and reading of the minutes of the previous meeting because we have some guests, visitors and friends here, and we will go right to the item that you are interested in. That is listed on my agenda as

Brunswick, BCOD, policies, by Milton Rudo. Milton, you have the floor.

"Is there anybody here who doesn't know Milton after all these years in the bowling business, appearances before us, with his very beautiful pictures?

"Here he is."

Do you remember that?

A. Yes.

Q. Then you were given the floor, and you made some remarks; is that right?

A. Yes.

Q. Do you remember what the purpose of your remarks was?

A. Yes.

Q. What was that?

A. To explain to them why we were involved in operating BCO centers and what our objectives were.

Q. And what your objectives were in operating the centers; is that the meaning of what you just said?

A. Yes.

[3147]

Q. And now, sir, I am going to ask if you can tell us in short form what you said your actual objectives, that is, the objectives of BCOD were?

A. I think I have expressed them here in court.

• • •

Q. That paragraph would you say, yes, in essence, reads as follows, page 6:

"The company recently established a bowling center operations division. In addition to providing economic evaluation, management counselling and promotional aids for bowling proprietors, the division

is prepared to assume salvage measures in the interim——"

[3148]

interim means in between, does it not—"in the interim operation."

A. May I read it? I think I may read it a little differently than you are.

Q. I am reading it, sir, I trust you agree with the words?

A. Not the emphasis.

Q. "The division is prepared to assume salvage measures in the interim operations of repossessed bowling centers in locations with good potentials, pending their resale as a growing business with credit or the operators with proven managerial ability."

Now, sir, those were not only your words, were they?

A. Are you asking me?

Q. These words I just read, they were in the annual report, were they not, which was sent out by Brunswick to the stockholders?

A. I don't know. I don't remember, but they were my words, I said them.

Q. You say, "to get into what our actual objectives are I'd like to read to you now from our annual report which was published on the first of March and was received by 100,000 shareholders, and I quote verbatim."

[3149]

Do you remember that?

A. Yes.

Q. You agree it was in the annual report for that year; is that so?

A. If I said it, it was. I don't remember sitting here that it was. I would presume so, yes, sir.

Q. You next say in your remarks as reported here:

"This was in our annual statement published in March. I realize everyone doesn't read all of the words in an annual statement. We have not kept it as a secret. If any of you were in attendance at our stockholders meeting, as I recall Jack Hanigan was at our meeting and it was later discussed in the Wall Street Journal and other papers, 'why BCOD'?"

Now, sir, you answer in your remarks, why, BCOD, do you not?

A. If that's what it says, I did, you have got the transcript; I don't.

Q. Suppose we read it together, this paragraph.

A. I don't argue with you.

Q. Would you be kind enough to read this aloud? I will stand over here and you can put your own emphasis on it.

A. "After many months of exhaustive study, we established

[3150]

BCOD to operate certain bowling centers whose ownership can't or won't meet their obligations for a variety of reasons. You fellows have run into this, and are aware and know whereof I talk. BCOD will operate these ventures until they are turned over to sincere and financially capable investors. This decision we thought we were compelled to make to protect the interests of our stockholders and to protect the value of your investments as bowling proprietors."

[3151]

Q. Those are remarks which you made, are they fairly reported in which you just read?

A. Yes.

Q. Now, sir, I am going to read you some more from your remarks and perhaps you would prefer, again, to read it yourself, would you rather do it yourself?

A. Whatever the Court wishes I am willing to go along with.

Q. Suppose then I read it, and I promise you it is not the Court's wish, it is just my wish:

"When we decide to repossess and close, that finishes it—"

The Court: Where are you reading from?

Mr. Hoffmann: Bottom of page 9.

Mr. McNeill: Aren't you going to read the next paragraph on page 7 where you just left off?

Mr. Hoffmann: No, I have no intention whatsoever of doing that. I am reading on page 9, Mr. McNeill:

The Court: I will permit it on redirect examination.

Q. "When we decide to repossess and close, that finishes it. After we have evaluated, and if we think it has some potential, our position is to repossess and sell to someone else because it is not the kind of

[3152]

place that we can operate. Either the rent is too high or we don't think it is the kind of place that we can operate from that point of view.

"The size of the establishment, too, has an effect on whether we should operate it or not. We have set as a bottom limit 16 lanes. We would operate a 12-lane house

if it was close to a 16-lane house, and we can have one manager running the two, and it would seem to have a potential, but basically we have started at 16 lanes."

Do you recall having said that, sir?

A. Yes.

Q. Now, sir, you testified under Mr. McNeill's questioning that Brunswick over the years sold off some centers; isn't that right?

A. Yes.

Q. What is the average size, if you know, of a center run by BCOD?

A. In the high 20's.

Q. What?

A. In the high 20's.

Q. Around 30, near 30 lanes?

A. Yes.

Q. Do you know how many lanes Skylark Lanes in Petersburg, Virginia, had in March of 1966?

[3153]

A. I read them off, sir.

Q. You didn't read the number of lanes.

A. I beg your pardon, I did.

Mr. Hoffmann: Your Honor——

The Witness: I don't have the transcript, but I read them off.

Q. If you read it off would you be good enough to supply that number for us, please?

A. May I look at the pieces of paper that I have?

Q. By all means.

A. Skylark Lanes?

Q. Yes.

A. 16.

Mr. Hoffmann: May the record note that the transcript, page 2924, which describes Mr. Rudo's testimony, does not record the number of lanes in Skylark.

Q. Then you sold something called Willow, that had 16 lanes; is that right?

A. Yes.

Q. And Cochise, 16 lanes?

A. Yes.

Q. And Cabrillo, 24 lanes?

A. Yes.

Q. And Portland, 16 lanes; and Stardust, 16

[3154]

lanes; and Lincoln Lanes, 16 lanes?

A. Yes.

Q. And then Brunswick Bowl in San Antonio, 24 lanes; and Ronnell in Sylmar, California, 32; and Rose Bowl, 24; and Bowladrome, 24.

Now, sir, did you use in selling these lanes the formula you described in your testimony today?

A. Yes, sir.

Q. And is that true of all of these lanes?

A. I am not sure about the early ones in 1966, I am positive on the ones from then on, the early ones may not have been.

The two least ones were not.

Q. Now, you spoke of your formula in terms of making an allowance for the dollar or the devaluation of the dollar?

A. No, sir.

Q. You did not?

A. Future price of money.

Q. Future price of money?

A. That's what I said, devaluation had no effect.

Q. You mean if the money is quoted at a price tomorrow different from the price today you made an allowance for that; isn't that your testimony?

A. I'm not an expert on this, but the financial

[3155]

and accounting I have accountants and banking people and they are projecting the use of money out over ten years they discount it based on its value as to what you could use it for today and whether it would bring the returns, that you have it tied up and can't use it.

Now, I'm not an expert in this field. And that's what they try to accommodate in that formula.

Q. Do they not take into consideration what the dollar would be worth ten years from now in making the calculation?

A. No.

Q. You said that the formula was, "We take the cash flow of a bowling center and we project it out over ten years, we discount it for the future price of money, and then we multiply that by 5.9, and that gives us a selling price"; is that correct?

A. Well, the one discrepancy in that, and I made this thing three times, the first thing we do is project the revenue over ten years, and then we take the increase at 3 per cent a year, and then we take that and develop a cash flow and go from there.

Q. What about this phrase, "we discounted for the future price of money," what does that mean?

A. That's just what I tried to explain, sir.

Q. In terms of your adding on 3 per cent?

[3156]

A. No, sir.

Q. What did you try to explain it in terms of?

A. I can't give you any better explanation than I just gave.

Q. I am going to quote this slowly to you, and I will ask you to explain each sentence or perhaps each phrase.

"We take the cash flow of a bowling center and we project it out over ten years."

That's the way you sell a bowling center, is that right?

A. No, sir, I told you that we take the revenue and project it out. I made an error when I made that, and I corrected it twice in my testimony.

Q. When you say you take the revenue——

A. Yes, sir.

Q. —you mean something different by "revenue" from "cash flow"?

A. Very definitely.

Q. What do you mean?

A. The total revenue.

Q. Does that mean the total receipts?

A. Yes.

Q. And the total receipts for a BCOD center, are they different from the total cash flow of a BCOD

[3157]

center?

A. Of course.

[3158]

Q. Is there any more you want to change? You changed cash flow to revenue.

A. We used both, sir. I said we take the revenue, project it out, develop the cash flow over ten years, discount it based on the future price of money, and then applied the five nine formula.

I don't use this formula regularly. I am not an expert in it, except that I have tried to give you some essence of it. That's the best I can tell you, sir.

Q. So that the Court, and the jury, and myself can understand it, you said you changed your testimony about the cash flow to the revenue, and you said you did that twice. Now you say you used both the cash flow and the revenue.

Am I correct in understanding that?

A. No, sir; you are not. You are trying to confuse——

Q. Can we go back over it again, please?

The Witness: Do I have to, your Honor?

The Court: Answer the question. You are on the stand, Mr. Rudo. Answer the question. If you can't answer it, say, "I can't answer it."

A. We take the revenue——

Q. Take the revenue.

A. Yes, sir; at a given year, and project it out over ten years, with a 3 per cent growth factor. We then

[3159]

take the cash flow that would be generated——

Q. You take the cash flow.

A. That is correct, sir. And we project that out over ten years. And then we discount that for the future price of money, which is a standard formula used by financial people and accountants. And then we take the 5.9, and that gives us the selling price.

• • •

[3160]

Q. Mr. Rudo, what you have just been talking about, in relation to the future price of money, is money over the years changing in its value, isn't that what you are saying?

A. No, sir.

Q. Well, for instance, if in the last year you could buy with a dollar 3 per cent more than you buy this year, that's an inflation of 3 per cent, is it not?

A. Yes, sir.

[3161]

Q. And isn't that the process that you are referring to, when you refer to the future price of money?

A. No, sir.

Q. Well, if you have something else that you would like to furnish us as to the meaning of the words, I would be happy to hear it.

A. If I can find it, I will get it, but I——

Q. No, in your own mind. It is your testimony we are talking about. You said the future price of money.

A. I can't do it any better than I have.

Q. Would you do it just once again?

A. As I understand it—and I will repeat this, I am not an expert at this—but I do know it has nothing to do with inflation, or the devaluation of money. It pertains to the investment of money. And it is a fact that it would earn so much if you could invest it every year for the next ten years, and compound it. This pertains to the fact that when you invest it and it is sterile in this one investment, like a mortgage, for ten years, it doesn't gain extra use and bring better returns.

And that is the best I can explain to you, sir. It has nothing to do with this.

Q. Now, this, the best that you can explain to

[3162]

us—and this is the formula that is used in selling businesses, is that right?

A. Oh, yes.

• • •

[3163]

Q. You had a center that lost $12,000, or so, the first year, $8,000 the second year. Apply your formula, if you will, and tell us how you priced that center?

A. Mr. Hoffmann, in a center that was losing money, we would price it at $8500 per lane.

Q. This is something different, this is not, then, what you said, the way you sold your centers when you testified in answer to Mr. McNeill's question, only applied to some situations of profit making, is that right?

A. Mr.—

Q. Just answer the question. Is that right?

A. I didn't understand your question. It got quite involved.

Mr. Hoffmann: With the Judge's permission, maybe the reporter will read the question.

The Court: Read it, please.

(Question read.)

A. I think I said—and I don't remember the exact words—that earlier it took us a while to evolve the formula, and in '66 we were not using consistently the same formula. And if I did mention it, it was only be-

[3164]

cause we did not discuss the fact that there were certain centers sold that did not have a positive cash flow, and those that do not have a positive cash flow, we either leased or we sold at $8500 for the equipment.

Q. I am going to read from your testimony, Mr. Rudo, at page 2930 of the transcript of this proceeding. This is from Mr. McNeill:

"Question: Can you describe how Brunswick arrives at a price which you will quote on one of its BCO centers?

"Answer: Yes, I can generally, because I don't use it regularly, and therefore I am not as familiar with it as I might be if I were using it regularly. We take the cash flow of a bowling center and we project it out over ten years. We discount it for future price of money. And then we multiply that by 5.9 and that gives us a selling price. This usually works out with a 30 per cent down to about a 15 per cent return."

That was your definition. Would you like to change it, sir?

A. No, sir; the only change I would add would be in '66—or where there is a negative cash flow we charged $8500. I never thought of it at the time I answered that.

[3165]

Q. But you would like to change it, would you not, and make that addition?

A. Sir, I would like to add, if that will help clarify the situation, because I have nothing that we don't want out and understood, that where we had negative cash flows in the early years, it would be ridiculous to try to work on a formula—

Q. How about in the later years when you had—

A. Sir?

Q. How about in the negative years when you had negative cash flow; right now, if you have negative cash flow; would you apply this formula?

A. We would sell them at $8500 for—

Q. You are not suggesting, when you put in your previous answer reference to the early years, that there are no presently existing negative cash flow centers?

A. I didn't mean that at all.

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[3166]

Q. And you recall, from your remarks to the executive committee of the Proprietors Association, that you regarded 16 lanes as the bottom for BCOD operations, didn't you?

A. Yes, sir.

Q. And what is the thought behind that remark, that the lower number of lane centers are not very profitable for BCOD to operate?

A. No, sir.

Q. What was the thought about 16 being the bottom?

A. In our early days as we looked at this, and from the analysis I had made in surveying companies like Firestone, who operate their own and compete, and others, there are certain volumes that you have to have, to maintain the kind of structure a big company has, and we arbitrarily picked 16 lanes.

Q. As generating enough volume for you to be

[3167]

interested in it, is that what you are saying?

A. Yes, sir. We still operate 16 lane centers right now.

Q. I beg pardon?

A. We have 16 lane centers right now that we operate.

Q. Do you know how many?

A. No, I didn't count them.

Q. Do you know where they are located?

A. If I went over the list, I could find them.

Q. But you don't know offhand?

A. Give me sometime to look—

Q. You know you operate some 16 lane centers; is that what you are saying?

A. Yes, sir.

Q. It could be one, it could be two, it could be a thousand?

A. No—yes, it could be maybe about five, six, eight. I don't know. I haven't looked recently.

Q. You are getting rid of some over the years, aren't you?

A. Sir, we sell any size.

Q. Sure?

A. Yes, sir.

Q. How many did you sell—over a period of how long a time—1965 to '73?

[3168]

A. We sold 11.

Q. I thought some of those were leased?

A. Two were leased.

Q. So you sold nine; is that your testimony?

A. Yes, sir.

Q. You put in two leased on top of them, but you sold nine, isn't that right?

A. Yes, sir.

Q. Now, Mr. Rudo, will you tell us offhand, and from your knowledge of your own affairs, about how many bowling centers went through the hands of Brunswick over these years, that is to say, how many centers had their equipment repossessed, or the centers taken by Brunswick; do you know?

A. I don't understand your question.

[3169]

Q. Well, let me make it simpler for you.

Do you know how many centers over the years 1965 to 1973 had their pinsetters and lanes pulled out of them because they failed to pay their debts to Brunswick?

A. I know that we evaluated 600. And I know that over a period of years we sold 210 in place that we never took back.

Q. Do you know how many you repossessed, how many lanes—

A. All those 600 we repossessed.

Q. My question is: How many centers and lanes did Brunswick repossess over those years?

Mr. McNeill: Excuse me. I object to the form of the question. He says centers and lanes and asks for a total.

The Court: Do you know how many lanes were repossessed, as distinguished from centers?

The Witness: No, sir; I can only talk—

The Court: Of the centers themselves.

The Witness: What we evaluated, sir. And I don't recall—I know at one time there were 19,000 pinsetters and lanes that had been repossessed.

[3170]

By Mr. Hoffmann:

Q. You do know that, then.

A. I know approximately that, yes.

Q. 19,000?

A. Yes, sir.

Q. Pinsetters and lanes?

A. Yes, sir. And 14,000 were sold to other people.

Q. 14,000 of the pinsetters—

A. —and lanes were sold to people other than BCO.

Q. So on that whole transaction, Brunswick didn't do so badly, it lost out on 5,000 of them, is that what you are saying?

A. No, sir; I think we lost out—I have not worked the calculation. I think we still have not recuperated all of our losses.

Q. Do you know that to be so?

A. Yes, sir. Well, I don't know the actual numbers, no, but that's my opinion.

Q. You don't know that, do you?

A. It is my opinion, from what I do know. I don't know the specifics; no, sir.

• • •

[3175]

Q. Now, I am asking you, do you have any knowledge of what the average amount received by Brunswick was on these pinsetters, during the period of time before they were repossessed, before they were taken out of the

[3176]

center?

A. The only recollection I have, I stated, was that at the time we were going into BCO, where an average contract per lane had run around twelve five, the average owed us was ten eight—this was in '64. And that's all I remember. I can't segregate pinsetters and lanes, because we didn't discuss it in that way.

Q. But that wasn't the moment in history in which the repossession took place, was it; that was the way you looked over the books at the time; is that what you mean?

A. That is when there was an avalanche of repossessions.

Q. But you don't know—you are saying now you don't know how much Brunswick received, on the average, for each of these repossessions?

A. I am saying to you that from what I know, as an executive of my business, that there was ten eight left in the receivables, based on discussions we had in '64, when these things were being repossessed.

So, really, if you want to take an average, you can take it out at seventeen hundred dollars.

Q. You are saying that there was ten eight left in the receivables when you looked over the picture late in '64, isn't that right?

[3177]

A. In '64; yes, sir.

Q. What you looked over was not the 19,000 repossessions record, isn't that so, you were looking over generally the contract and the figures about the contracts which Brunswick had made with the proprietors for the sale of machines.

A. Yes, sir.

Q. So if the next day a payment came in, it would be a payment that would subtract from the total amount of money lost, isn't that right, or the money outstanding, that's correct, isn't it?

A. Well, what you are assuming could be correct; yes, sir. I can't argue——

Q. My question to you goes this way. You did, in fact, repossess machines; you agree to that, don't you?

A. Yes, sir.

Q. Do you know, on the average, how much your customers had paid on the machines which Brunswick repossessed?

A. Not any differently than I stated, sir.

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[3179]

Q. If you sold a center would you get the center back under your contract?

A. Yes.

Q. For nonpayment on the machines?

A. We would get the equipment back and we'd have the

[3180]

option in some cases to consider taking over the center.

Q. Cases would be perhaps where the bowling center proprietor owned his own premises?

A. No, sir, not necessarily.

Q. How do you get to take over a piece of property that's owned by somebody else?

A. We have the right to negotiate with the landlord.

Q. You mean you would have the right to negotiate with the landlord?

A. That's right.

Q. But you could repossess the machines?

A. Yes.

Q. And there is a vast difference between the repossession of machines and of a bowling center, is there not?

A. No, sir.

Q. No, sir? Is that your answer?

When you yanked out 19,000 pinsetters did you yank out 19,000 bowling centers, or the total number of pinsetters divided by the total number of lanes—I'm sorry, if we take 19,000 at base, what is the average lane, number of lanes, in a center?

A. In the U. S.?

Q. Can we go with 20?

A. In the U. S., no, about 17 is the average in the

[3181]

U. S. based on some statistics that I am aware of.

Q. You're talking about 19,000 total pinsetters. How many centers are you talking about?

A. I don't know.

Q. Can you do that arithmetic in your head?

A. No.

Q. About nine to ten thousand bowling centers?

A. Yes, we have testified to that.

Q. Now, those nine or ten thousand, did Brunswick acquire those centers?

A. I don't understand—no, sir.

Q. Well, now, am I to understand your testimony correctly that you are suggesting there is no difference between the repossession of a pinsetter machine and a bowling center?

A. Yes, sir.

Q. That's what you're saying?

A. I am saying there is a difference.

Q. There is a difference?

A. No, sir, what I—well, your question has got me completely confused. I don't even understand what it is.

Q. Maybe it can be read back to you. I think my question is a very simple question, sir.

A. That's a matter of opinion.

Q. Please listen to it carefully when it is read.

[3182]

(Record read.)

Q. Is there a difference between a pinsetter and a bowling center?

A. Yes.

Q. Let's start that way.

A. Yes.

Q. When you repossess a pinsetter is that different from taking over a bowling center?

A. Yes.

Q. You do agree that it is different?

A. Yes.

Q. Now, if you take over 19,000 pinsetters, is that different from taking over 10,000 bowling centers, I mean 190,000—

A. I don't know what you mean.

Q. All right, 19,000, I'm sorry about the numbers, your Honor, I just had a stutter or statter over the numbers.

A. Thoroughly confused.

The Court: Approximately how many bowling centers in the country?

The Witness: About 9,000.

The Court: You say your company has taken over 19,000 pinsetters and approximately 18,000 lanes?

[3183]

The Witness: Yes.

The Court: Are there instances where you take over pinsetters but you don't take over the center, you leave the real estate there?

The Witness: Yes.

The Court: Maybe the liquor license?

The Witness: Yes.

The Court: Now, Mr. Hoffmann.

Mr. Hoffmann: Thank you, your Honor. I am sorry I couldn't come by that myself.

By Mr. Hoffmann:

Q. Now, how many centers, if you know, were actually taken over by Brunswick in the period of time 1964 to 1973?

A. How many centers we took over—centers as distinct from——

Q. No, centers.

A. That we took over to operate, just centers?

Q. If you'd just listen to my question we will have so much less difficulty.

A. I don't know.

Q. You don't know?

A. No.

Q. Who in the company would know?

A. I don't know, sir.

[3184]

Q. You are in charge of this operation of BCOD, are you not?

A. Yes.

Q. And have been right along since the beginning, have you not?

A. Yes.

Q. And you don't know how many centers Brunswick took over from the proprietors over the period of time when you were in charge?

A. We never kept records on centers, sir.

Q. You never kept records on centers?

A. I never saw any. I know equipment that was repossessed in quantity, but I don't know the number of centers.

Q. In answer to a question put to you by the Judge just a couple of minutes ago you understood that a center included real estate, liquor licenses and the like, did you not?

A. Yes, sir.

Q. You kept no records?

A. Includes people, it includes leagues, it includes a lot of things.

Q. You kept no records of that?

A. Of how many centers we——

Q. Yes.

[3185]

A. No, I don't—I have never seen it.

Q. You don't know whether you acquired thousands of centers or only hundreds of centers over those years?

A. We acquired?

Q. Yes.

The Court: Acquired.

Q. Took over.

A. You mean to operate?

Q. You are supplying these words "to operate," I am not.

A. That's all I am trying to find out. I don't know, sir, I don't know how many centers we repossessed equipment from.

Is that what he is trying to get at?

Q. That was not my question.

A. Then I'm sorry.

Q. Mr. Rudo, if I may say so, I think we both understand some of the principles of communication, isn't that true, in the English language, of course?

A. Yes.

Q. Now, Mr. Rudo, in answer to some questions put to you by the Court you replied that you understood the difference between taking over a machine and taking over a center, did you not?

A. Yes, sir.

[3186]

Q. And I have asked you, do you know how many centers Brunswick has taken over, Brunswick or BCOD?

A. I have never seen records on centers. I don't know how many.

Q. Do you know whether you took over more than you operated?

A. Oh, yes.

Q. Do you know that to be so?

A. We repossessed equipment out of centers more than we operated—your question is a confusing one. I can't answer it.

[3187]

Q. It is clear that we understand each other on the difference between a pinsetter and a center; isn't that right?

A. I am not—yes, sir.

Q. And a center includes real estate, either by leasehold or by ownership of the property, does it not, bowling center?

A. Yes, sir.

Q. It includes licenses such as liquor licenses, other licenses from the authorities; is that right?

A. Yes.

Q. It includes in many instances vending machines, settees, carpeting and the like; is that right?

A. Yes, sir.

Q. Now, I have asked you again, and I ask you again, quite apart from whether or not Brunswick operated, do you know how many centers using the description just given which you approved, how many centers Brunswick took over during the years 1964 to the present?

A. No, sir.

Q. You just don't know?

A. No, sir.

Q. And is it also your testimony that nobody in this great organization knows?

[3188]

A. I couldn't tell you. I have never seen any records like that.

Q. If you haven't seen them, where would I look to get an answer to my question?

A. I haven't the slightest idea.

• • •

[3189]

By Mr. Hoffmann:

Q. You do know that the number exceeds the

[3190]

number of centers taken over by Brunswick exceeds the number of centers operated by Brunswick; you know that?

A. Yes.

Q. Do you have any knowledge about how many times, some way of telling us how many more centers were taken over than were actually operated?

A. I would not guess.

Q. You would have no way of knowing that?

A. I wouldn't guess.

Q. Do you think there is anybody in Brunswick who knows that?

A. I wouldn't know.

Q. You are the head of all this, aren't you, the operation of bowling centers?

A. Yes.

Q. And you wouldn't know? Who in your organization would know how many bowling centers were taken over?

A. Sir, the records in that—in that would have been kept in another section. We don't keep records to my knowledge by bowling centers.

I know over a period from 1965 to 1973 we sold 210 that we never operated, and we sold them as centers, but we only had the equipment involved, to other operators. I know, but I don't know how many centers

[3191]

per se we repossessed. I put this 14 different ways now.

Q. Do you know that there were at least 210 more than you operated now; is that right?

A. Yes.

Q. Because you say you sold off 210; is that right?

A. Yes, that we never operated.

Q. That you never operated?

A. That's right.

Q. Do you know what it was you sold off, whether you sold off leases, liquor licenses and the like, for those 210?

A. I told you, sir, we sold or leased our equipment, but we kept them as centers so that the leagues were there, the personnel were there and they didn't have to make changes in the overall environment.

Q. When you say you kept them as centers, you simply mean, do you not, that you didn't pull out your equipment——

A. No, we tried to keep them running so that a new owner would come and take them over and have a business.

Q. They——

A. Would you let me finish?

[3192]

Q. Were they operated by BCOD?

A. No.

Q. You mean to say that this some 210 centers that you permitted the existing operators to operate rather than yanking out the equipment; is that the meaning of your testimony?

A. Part of them in 1963 and '4, until we could repossess them and pull the equipment out or find other people, yes.

Q. So that it was not, never became a Brunswick center, any of those 210, did they?

A. As a BCO center?

Q. Yes.

A. We—the only thing we did was own the lanes and pinsetters and maybe some snack bars, but we kept the business there, and that was the important thing.

The Court: No real estate?

The Witness: No.

Q. No licenses?

A. We may have acquired a license or two at a time to help the situation remain open, I don't remember.

Q. Generally speaking none of that, generally speaking you only had a right to the pinsetters and lanes; is that right?

A. Yes.

[3193]

Q. When you are talking about transferring those 210, all you did was to let the fellow stay there with his bowling center and keep it open without yanking out the machinery; isn't that so, without yanking out the pinsetters and the lanes?

A. Not in all cases. In some cases I remember, I remember one case where a salesman operated it for a short period of time until they could make the transfer, because he had a potential sale.

Q. So what we said is true of 209, not 210?

A. 210, 209——

The Court: This was Brunswick operated in those years; is that right?

The Witness: Yes, BCOD was not in existence.

Mr. Hoffmann: Your Honor, if I may, with great respect, I'd like to clarify the question and answer that your Honor just asked because his prior testimony does not indicate it was Brunswick that operated those 210 centers, with great respect.

The Court: All right. You ask it.

The Witness: We did not operate the centers——

Q. Brunswick did not operate those 210?

A. No, we sold the equipment in those centers and we allowed either to keep them open, Brunswick did,

[3194]

BCOD was not involved.

The Court: That's what I mean, that Brunswick was the corporate entity at that particular time, you did not have the BCO Division?

The Witness: Yes.

Q. But neither Brunswick nor BCOD operated those 210 centers?

A. It may have been a slight caretaker situation case, but basically, no, we did not. We tried to keep them—

Q. You let the pinsetters and lanes stay where they were and they didn't take them out; is that what you're saying?

A. We sold them in place, that's right.

Q. Then you sold them to somebody else?

A. Yes.

The Court: How about a short recess.

(Short recess.)

[3195]

Q. Now, sir, Mr. Rudo, do you know how many centers over these years were acquired by BCOD?

A. I know how many we operated at the end of each year, I could reconstruct it.

Oh, I'd say about between what we closed and sold, maybe 220, 225.

Q. If I put to you that it is 230, I have just made the count, would that be agreeable to you?

A. I don't know how you arrived at that.

Q. By counting from the number of centers listed and given to us on the P and L statements furnished to us by Brunswick.

A. I would—I don't know what you used, I don't know—I can't tell you. Some of these have not been operated during the year, I can only tell you that it is close, I would say that.

Q. You mean it might be a little less?

A. Yes, could be.

Q. You said your number was 220?

A. Around that, 220, 225, and I figured it very fast based on what we closed, what we sold, and approximately what we had to operate.

Mr. Hoffmann: Perhaps I can have agreement with Mr. McNeill and have the number stipulated. I submit to you, sir, that the count of the

[3196]

number of centers on an analysis of profit and loss of BCOD centers which is plaintiff's Exhibit 47, which is the material submitted—taken from material submitted to us, shows a total number of 230.

Mr. McNeill: Mr. Hoffmann, I will not stipulate with you based on plaintiff's Exhibits, but I point out that Brunswick Exhibit 7 shows a total in the first column of commenced operating, and it has totaled these over the years 1965 through 1972, and the total is 222.

Mr. Hoffmann: Perhaps, Mr. McNeill, you'd be good enough to take a look at the profit and loss sheet which you furnished to us and see if that comes out the same so we don't have to take up any more time.

Q. We can agree it is 220 to 230; is that right?

A. 220 to 222 we can agree on, that's what he just read.

Q. Suppose we agree on 220, would you find that a favorable thing for you?

A. Yes.

Q. You will agree on 220?

A. Yes.

[3197]

The Court: That's 1965-1972?

Mr. Hoffmann: Yes.

Q. Now, sir, in this period of time from 1965 through 1972 you sold nine centers; is that your testimony?

A. Yes, sir.

Q. Is that about one a year?

A. It is a little better than one a year, yes, sir.

Q. Is it? Nine centers sold, two leased, was it?

A. Yes.

Q. On the leasing, was there a standard form lease used by Brunswick, did you have a standard system for leasing to complement your system for selling?

A. We only leased the two, and this was approached to us, as I recall. We don't have a standard form of leasing except on the bowling side where we would lease pinsetters, and we have no lease of lanes that I know of, but in thos two, as I recall, these were landlords who wanted to lease them.

Q. Well, sir, you did have your formula for selling, you didn't have a standard form for leasing; is that right?

A. Yes.

Q. In applying your selling formula, did you

[3198]

apply it to any of the nine centers which you testified you sold?

A. Yes.

Q. Well, now, take a look—by the way, do you still have those spread sheets in front of you?

A. I have—

Q. No, these.

A. The ones we sold, yes, I have these.

Q. Would you be good enough to look at Ronnell Lanes in Sylmar, California, 32 lane center?

The Court: What number?

Mr. Hoffmann: 313.

A. Yes, sir.

Q. Lost 25,219 in 1966, lost 34,819 in 1967, it lost 53,205 in 1968, it lost 36,399 in 1969, it lost 56,541 in 1970, it lost 17,186 in 1971.

What formula did you use in that sale?

A. We sold it for 8500 dollars a unit, as it so happens that one was an original sale of lanes and lease on pinsetters which has since been converted to a sale, a modernization and scorers added, so that proprietor evidently feels he can do quite well in that place.

Q. Brunswick with all of its skill and management couldn't, however?

[3199]

A. That's right.

Q. What is this, an optimist that you sold it to?

A. He owns two or three other bowling centers in California.

Q. Do you know the price at which you sold it?

A. I do not have the contract.

Q. Do you have any idea of the price?

A. Oh, the $8500 would have been the basis of the price.

Q. For 32 lanes?

A. Yes.

Q. And that would come out by my quick calculation, $272,000.

A. I have not calculated it. If that's what you say——

Q. I put it to you that that's what it is.

A. All right.

Q. Now, are you suggesting that this man pay over to Brunswick $272,000 for a center that had been losing and lost every year from 1966 through 1971?

A. I am suggesting that he paid more than that because he added scorers and he modernized it with Astro Lanes.

[3200]

he paid for that?

A. Yes.

Q. I'm talking about his acquiring the center at the time he made the acquisition from you.

A. To my knowledge, that would be what he had done, yes.

Q. He paid—are you suggesting to the Court and jury and me that he would have paid $272,000 for a center which had lost $128,000, and had no profit making record whatsoever, whatsoever; is that your testimony?

A. He bought it and he has added, modernized it, and put scorers in.

Q. Do you know how much he paid for it?

A. I don't have the contract, no.

Q. Do you know whether the formula you suggested, negative cash flow——

A. I presume it had.

Q. When you say you presume, does that mean you know?

A. I haven't seen the contract.

The Court: How much did you say it lost over those years?

Mr. Hoffmann: I carry it on the exhibit, a total loss of 128,455 cash.

The Court: Ronnell Bowl?

[3201]

Mr. Hoffmann: Yes.

The Court: $220,000?

Mr. Hoffmann: Yes, on the cash flow exhibit. On the other one it was more, on the total loss on the profit and loss it was more, over 200,000.

Q. Now, sir, do you have any personal knowledge of any of these nine transactions?

A. I have personal knowledge of Rose Bowl, Brunswick Bowl and Bowladrome.

Q. Not the other six?

A. To my knowledge, there is as an executive seeing —I have some knowledge on Lincoln.

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[3205]

Q. Well, now, if we were to go through these various nine sales, am I to understand that you would not know the individual transaction, you would not know precisely what was applied to the figures; is that right?

A. There are two questions there, as I understand it. I would not know the specific transaction, but I do know

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[3206]

as an executive that these men would follow the formula.

Q. And that formula had no variables, no variations, in it at all, always applied in the same way to the sales of these businesses?

A. To my knowledge, yes, sir.

• • •

[3210]

Q. These salesmen, do you know how many salesmen there are in that division that you have just described?

A. Yes, sir, about 60.

Q. And do you know how many have entrusted to them the matter of selling bowling centers, BCOD bowling centers?

A. All of them have some part, and six or eight have a very definite part.

Q. Are you suggesting that 60 salesmen worked from 1965 to 1972, about nine years, and produced nine sales; is that what you're saying, of bowling centers?

A. That's what I'm saying, yes, sir.

Q. Any reasons why they were so hard to sell?

[3211]

A. The only reason that I stated, sir, and—is the fact that there is a lot of used equipment on the market, it can be bought a lot cheaper than we are willing to sell ours, and there is much of this being purchased.

I showed you ads, I had them here the other day, they have gone back to 1966, there are many people in the used equipment business.

Q. Now, you went into the bowling business for salvage, isn't that right; isn't that what happened in 1965?

A. Yes, sir.

Q. And your idea of salvage according to what you said, what you had to say to the executive committee of the BPAA in San Juan, was to take over and rehabilitate centers, make them good going concerns, and then sell them off; isn't that your idea was?

A. Sell them as businesses, yes.

Q. As going businesses; is that right?

A. Yes.

Q. Did that idea apply, that original idea of yours in 1965, apply to the sales which Brunswick actually made of the nine centers; were those sales an application of your original plan, your intention?

A. That's our intention, yes.

• • •

[3215]

Q. Your policy was to rehabilitate, wasn't it, and then sell; wasn't that the policy you described in 1965?

A. Yes, sir.

Q. And not simply a policy of: We will put our boys to work on it and sell, whether we rehabilitate it or not?

[3216]

A. I don't know how you can do it, except work at it.

° ° °

[3217]

Q. 220 centers operated by Brunswick at different times, from 1965 to 1972, nine were sold,

[3218]

is that right?

A. Yes, sir.

° ° °

[3222]

Q. Were your salesmen under any instruction as to the particular centers which they sold off, were they told to sell these centers rather than selling other ones, do you know?

A. Early in our first operation, in the early years of BCO, we would give a list to the Bowling Division, and they would try to work on those, because we felt they were scattering their shots.

And in recent years we have just let it open and they have no assignment. They can get a quotation on any bowling center they want, any time they want.

Q. Skylark Lanes in Petersburg, Virginia, how many lanes did you say there were?

A. 16, sir.

Q. The first four transactions that you had were Skylark, Willow, Cochise—

[3223]

A. That's three.

Q. I'm sorry. Skylark, Willow, Cochise—the first six transactions—Skylark, Willow, Cochise, Cabrillo and Portland Lanes.

Is there any significance to be drawn from the fact that five out of those six transactions involve 16 lane centers?

A. Not in my mind.

Q. Do you know anything about the instructions which were given to your salesmen as to which centers should be sold during that period, 1966 and '67?

A. To my knowledge, there were no instructions given to them to sell any size bowling center.

Q. Well, they were given lists, weren't they, of some sort, isn't that what you just said?

A. Yes, sir; in the early days.

Q. And those lists would have the names of the centers on them, wouldn't they?

A. Yes, sir.

Q. And those centers which they were given to sell included these six centers, did they not?

A. I don't know.

Q. You don't know?

A. No, sir. They may not have.

Q. Even though they were given the list?

[3224]

A. I know they were given lists.

Q. Were they free to sell as they please?

A. Yes, sir; but they were given a list to give them some guidance.

Q. You have no way of knowing or remembering whether or not these names appeared on the list given the salesmen at that time?

A. I don't know.

Q. Do you remember what the instructions were in connection with the lists given the salesmen?

A. No, sir; it's been a long time.

Q. Could those instructions have said: Try to sell the following bowling centers—and then named them?

A. Yes, could have said that. Yes.

Q. Is that consistent, as you can remember, with the sense of them?

A. I don't remember.

Q. You don't remember. Do you remember whether or not the instructions said: Confine any sales of bowling centers to the names of the centers on these lists?

A. Yes, sir; I remember that they did not say that.

Q. You remember that they did not.

A. Yes, sir.

[3225]

Q. But you don't remember what was on the instructions?

A. That is correct, sir.

Q. Do you remember whether or not the instructions said: Don't sell any centers which have more than 30 lanes.

A. I don't.

Q. You don't remember?

A. No, sir.

Q. As to that, you don't remember?

A. That is correct, sir.

° ° °

[3228]

Q. Were you in 1966 and '67, you personally—you, Mr. Rudo—in charge of BCOD?

A. Yes, sir.

Q. Who was in charge of getting up the lists for the sales people to work from, do you know?

A. Well, our people worked with the sales department, which did not report to me in '66. When they put a list together, I would see it occasionally.

Q. Your people put a list together, you saw the list, is that right?

A. Occasionally; yes, sir.

Q. But you don't remember what was on the list, is that your testimony?

A. I don't remember the specific names of each center; no, sir.

Q. Do you remember anything at all about instructions given to the sales people as to the use of that list?

A. Yes, sir.

[3229]

Q. You do remember?

A. Yes, sir.

Q. What do you remember about that?

A. That they were not limited to these.

Q. Anything else they were not limited to?

A. Not that I know of.

Q. And anything about their conduct in handling the transactions, anything like that given to them?

A. No, sir; it was a list of bowling centers that they were recommended to sell—period.

Q. The list was now a recommendation for sale, is that your testimony; you recommended that they sell these centers, is that your testimony?

A. I thought I said the same thing all along, sir.

Q. I thought otherwise.

Mr. Rudo, do you remember that this was a list of centers that was recommended for them to sell; did the recommendation appear on the list, on the piece of paper,

did it say on top, for example: We recommend that you sell the following named centers?

A. I don't remember the words.

Q. Well, did something about that appear on the piece of paper that contained a list of names?

A. I don't remember. I didn't put it out.

Q. But you do remember, even though you didn't

[3230]

put it out, that there was no restriction on the bowling centers that could be sold?

A. That is correct; yes, sir.

Q. What makes you remember that?

A. Because there was none.

Q. You know that to be so?

A. Yes, sir.

Q. Did you give the instructions to the sales people?

A. No, sir.

Q. Do you know who did?

A. Whoever the sales manager was back in those days.

Q. Well, be that as it may, the facts show, do they not, that in the period of time when your first sale—in March of '66 through 1967, there was nothing—with one exception—but 16-lane centers sold, that one exception being Cabrillo Lanes, is that right?

A. That is correct.

Q. And then your next transaction, after the one last in '67, doesn't take place until May of '69, from your own testimony. Do you know whether your sales people were busy during that year and a half trying to sell BCOD centers?

A. We were trying to sell a lot of things in those days. Their responsibility was more than just selling

[3231]

BCO's.

Q. Do you know whether they tried to sell BCOD centers?

A. Oh, yes, sir; I know that we made quotations.

Q. Then you sold a center, Lincoln Lanes, in Merrill, Wisconsin, in May of '69. Do you know how many lanes that center had?

A. 16.

Q. That's the bottom of the barrel for number of lanes, isn't it, according to your own statement?

A. That's not my statement.

Mr. McNeill: Your Honor—

The Court: Just a minute. Yes, Mr. McNeill.

Mr. McNeill: I think the witness has clarified it. Mr. Hoffmann's statement.

Mr. Hoffmann: "Bottom line," is what the witness used. "Bottom line" is the phrase.

Q. What are the largest centers, do you know, that BCOD operates?

A. 64 lanes.

Q. Did you sell anything like a 64-lane center?

A. We only have two, I think.

Q. Do you have any 50's?

A. Two or three.

[3232]

Q. Any in the 40's?

A. Yes, sir.

Q. How many?

A. I couldn't tell you.

Q. Lots in the 30's, isn't that so?

A. Yes, sir.

Q. Was there any 40-lane center sold, any center with 40 or more lanes sold by Brunswick?

A. BCOD doesn't sell them.

Q. By Brunswick. Was there any lane of more than 40 lanes sold?

A. Have we sold since '67 a 40-lane or more——

Q. Yes, that's the question.

A. The bowling side has sold, yes. Not a BCO, but they have sold better than 40 lanes.

Q. Who has sold this?

A. The salesmen.

Q. Are these centers that you are referring to now listed in the centers which were either sold or leased which you gave in your direct testimony?

A. No, sir; you asked me if we have ever sold a better than 40-lane center. And I asked you the salesman. And you said yes.

And we sold equipment to——

Q. Oh, you are using the word, "sold" in

[3233]

the sense of selling any product to the center, is that what you are saying?

A. I am talking about selling a 60-lane center of equipment.

Q. You mean you sold equipment to such a center?

A. Yes, sir.

Q. But heretofore we have been talking about selling the centers themselves, have we not?

A. I tried to clarify it, so I would understand——

Q. Let me clarify it.

Did you at any time—by "you" I mean Brunswick—from 1965 to the present, sell any bowling center, the center itself, where the center had more than 40 lanes?

A. No, sir; we sold only equipment for such.

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[3234]

CROSS-EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Rudo, you said in your direct testimony that you made an offer to sell Fair Lawn to Mr. Daniel Lieblich; is that correct?

A. Yes, sir.

Q. When did you make that offer?

A. I made the offer in 1970.

Q. Can you date it more specifically than that?

A. In the spring. I made it in a bit of testimony that I was giving on an examination, and I also discussed it with him in the hall, and told him if he was really interested we would be glad to——

Q. You are answering the question when, are you aware of that?

And it was in the spring of 1970; is that right?

A. Yes.

Q. And according to your testimony a hearing in this case was going on at that time; is that correct?

A. I was being questioned, yes, sir.

[3235]

Q. Now, you say you made an offer in the course of the testimony; is that right?

A. Yes.

Q. What was your offer?

A. That we'd be glad to sell him Fair Lawn and we'd be glad to get him a price.

Q. When you say you made him an offer, you were testifying; was I interrogating you at the time, do you remember?

A. I don't remember.

Q. But you were answering questions from a lawyer; is that right?

A. That's correct.

Q. In the course of answering questions from a lawyer you made an offer to Mr. Lieblich; is that your testimony?

A. Yes, sir, that we'd be glad to sell him Fair Lawn.

Q. Do you know whether Mr. Lieblich was in the courtroom at the time?

A. Yes, he was.

Q. How do you know that?

A. Because I saw him.

Q. And there you were sitting on the stand answering questions and you made an offer.

Do you remember precisely what your language

[3236]

was when you made that offer; how did you frame your words to make that offer?

A. I don't remember, I don't remember precisely. I offered that I'd be glad to sell him Fair Lawn, we'd be glad to quote him a price; in essence is what I said.

Q. You said you'd be glad to sell him Fair Lawn and what else?

A. Quote to him a price.

Q. Did you quote the price from the witness stand?

A. No, sir.

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[3238]

Q. You didn't say anything about a price in your testimony, did you?

A. No, sir.

Q. So you said, you say, something like this: I'd be glad to sell Fair Lawn to Mr. Lieblich now."

[3239]

Is that right?

A. Words, I am sure you can dig out, I don't remember them exactly.

It was similar to that.

Q. But they were enough for you to say here and now under oath you made an offer to Mr. Lieblich?

A. I was interested to sell him Fair Lawn in 1970, he can buy it, I talked to him outside in the hallway and he never was interested in the price.

Q. Let's come to your talking to him outside in the hallway.

When did that happen?

A. About the same time.

Q. It was in this courthouse?

A. Yes.

Q. And it was in the hallway in this courthouse; is that right?

A. Yes.

Q. Who was present at the time?

A. I couldn't tell you.

Q. Anybody other than yourself and Mr. Lieblich?

A. Could have been.

Q. Mr. Lieblich was present, wasn't he?

A. Yes.

Q. And you made this offer audibly enough so

[3240]

he could hear you somewhere?

A. Yes, he said he was not interested in discussing it at the time.

Q. Physically where were you?

A. Right outside here in the center of the courthouse.

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[3242]

Q. Do you remember anything else, any pleas-

[3243]

antries, social things that might have passed between you?

A. It may have occurred at that time, but I don't remember them. I remember that, because much of the testimony has been that we weren't interested in selling, and we are.

Q. You remember that, because the testimony is that you weren't interested in selling?

A. I have heard that from him and Mr. Dankoff.

Q. Do you have any other reasons for remembering that, besides that, besides the testimony that you weren't interested?

A. Besides what?

Q. Besides the testimony that you just described, which was: You had heard testimony that you weren't interested in selling. That's why you remember it, you just said.

A. I'm sorry, sir. If I said testimony, I am not sure of that. I have heard them make statements in meetings that we were not interested in selling. And that was one of the reasons that I did this. And we would be glad to sell any one, any one of them.

Q. Yes. And I suppose to anybody in the world, if the price is right, isn't that so?

A. Absolutely.

[3244]

Q. And if the price is so high that no sensible man would be interested, you won't sell, isn't that so?

A. So far we have been able to find people.

Q. Yes, you found nine, didn't you, over a period of about nine years. That's what you were able to find, with your prices.

A. Monaco Lanes in Denver sold for $500,000, a 32-lane center. That's higher than we sold Ronnell. It was somebody else that bought it. We didn't sell it, had nothing to do with it. So our price is not so out of line, Mr. Hoffmann, if you know what is going on in the market.

Q. Mr. Rudo, the bowling industry has been good since when, the bowling operator business has been good since when?

A. I don't know what you mean, sir.

Q. Well, it's been profitable in recent years, hasn't it, it has turned from the days of the depression in bowling, hasn't it?

A. The bowling business has had its cycles of good and bad for many years, sir. And it has been good since—oh, '69, '70 it started its upward trend.

Q. '69 or '70. Do you know how many bowling centers Brunswick succeeded in selling since '69 and '70, since the bowling business was good, in its up cycle?

[3245]

A. Is that a question, sir?

Q. Yes, it is. Do you know how many they have sold since the—

A. I didn't hear you, sir.

Q. Since the bowling business became good, which you say was in '69 or '70.

A. We have sold five of the BCO centers.

Q. Are you including the leased ones now?

A. You said '69 and '70, is that right, sir?

Q. Yes.

A. Well, we have sold five since '69.

Q. You sold Brunswick Bowl in May of '71.

A. Sold Lincoln Lanes in May of '69.

Q. I said since '69, '70. Was the business good in May of '69?

A. I think it was getting better; yes, sir.

Q. It was getting better. When do you say the business became good again, after its depression?

A. I am not going to argue with you. We sold—

Q. If you will just answer my questions, there won't be any argument at all.

A. I will try to.

Q. And that is your job, if I may say so.

A. I will try to.

Q. When did business get good in bowling after

[3246]

a depression; is it your testimony that it was good in May of 1969?

A. I think the bowling business had bottomed out in '69 and was starting on its upward trend; yes, sir.

Q. It bottomed out in '69?

A. That is correct. Some people were improving. Our own records show that we were improving.

Q. In '71 you sold Brunswick Bowl, Ronnell Lanes and Rose Bowl; that's three, is that right? And Bowladrome, is that correct?

A. That is correct, sir.

Q. That's four. Four centers in 1971. Did you sell any in '72?

A. No, sir; if we had, it would be on that list.

Q. So you sold, since the business got good in 1969—'69, you think the whole year bottomed out—'69, '70, that's two; '71, that's three; '72, that's four years. You sold four

centers, and if we count Lincoln Lanes in May of '69, you sold five centers, is that right?

A. Yes, sir.

Q. Approximately one a year during the period of time when you say the bowling industry had gotten good again. Sir, how many centers did you have to sell during that period, '69 to the present?

[3247]

A. Somewhere between 165 and 167.

Q. Now, you say there were offers made?

A. Yes, sir.

Q. That was your direct testimony. Do you know how many offers were made?

A. I told you that we had made over 20-some quotes per year. It averages 40, 50.

Q. And against which you sold how many centers, nine?

A. I don't understand your questions. I sold nine from the beginning—yes, sir.

Q. And you say there were offers made about 20 times a year?

A. There were requests for prices.

Q. And were the prices quoted in response to those requests?

A. In every one of them.

Q. And they succeeded in producing nine transactions of sales, is that right?

A. We had more transactions, but some people could not—

Q. Of sales?

A. Of sales; yes, sir. That actually were consummated in sale; yes, sir.

Q. And if there were 20 a year for a period

[3248]

of nine years, that's 180 inquiries over the years, is that about right, against which you sold nine. Now, sir, in recent years, if you failed to sell more than one a year, it wasn't because of depression in bowling, isn't that so? We just learned that there was an upswing starting in '69, isn't that correct?

A. Yes, sir.

Q. Could it have been the price, Mr. Rudo, could it have been that the price was too high?

A. No, sir.

Q. You shake your head and you say no, sir.

A. That's correct.

Q. What other factor do you know of would discourage people from buying bowling centers at a point in time when the bowling business is good, other than the price?

A. I have stated this once in your questioning this morning, sir, and once at Mr. McNeill's statement. There are hundreds of units in the field as used. Our business quotations indicate there are good returns—we have checked this with all the financial people we can, to make sure we are fair—I am convinced in my mind we are fair. I am convinced that the used equipment that exists in the United States has hindered the sale of this.

[3249]

And the fact, also, that existing bowling centers are for sale have hindered the sale of our units.

Q. Well, sir, we are talking again of the sale of bowling centers, aren't we? That's all we are talking about now, isn't it?

A. Yes, we were not talking equipment, because we have been selling equipment to new centers.

Q. You have been selling equipment?

A. Yes, sir.

Q. And I have been asking you how come it is that you haven't sold more bowling centers than you did sell. That's what we are talking about, is that right?

A. Right. Yes, sir.

Q. I put this question to you, Mr. Rudo. In the last three years—1970, '71 and '72—has your correspondence, in which you made price quotations to prospective customers, reflected the fact that the purchaser—prospective purchaser has said, "I will not go through with the deal you propose because the price is too high"?

A. There have been occasions when that happened.

Q. You don't give out a price quotation unless you are asked for one, do you?

A. I don't get involved in it, so I can't answer that

[3250]

question. I presume our salesmen think they can sell one and will ask for price quotations so that they can quote it to someone.

[3251]

Q. I am not quite sure what you mean when you say you don't get involved with it.

A. I don't sell bowling centers.

Q. Here you said in 1970 you sat on the witness stand, that you offered to sell a bowling center, that you went out in the corridor of the courthouse to——

A. I did, and I make the offer now, the same thing, and I will have a salesman here within 24 hours to make the deal.

I don't get involved in making direct sales any more.

Q. You just get involved in making offers; is that it?

A. That's not an offer. It shows that I am interested in selling it.

It is not a specific offer.

Q. Oh, it is not an offer that you made on the witness stand; is that what you're saying now?

A. No, you are just trying to confuse me with words.

Q. Maybe I don't have to—well, I won't say anything.

Mr. Rudo, you say you went down the corridor of this courthouse and made an offer to Mr. Lieblich?

A. That we were interested in selling Fair Lawn to

[3252]

him.

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[3254]

Q. Well, my question is did you make the offer to Mr. Lieblich or anyone else any place in the world after April 1970 for the sale of Fair Lawn?

A. Did I?

Q. Yes, did you?

A. No, sir, that I can remember.

Q. And do you know whether anybody else in your organization offered Fair Lawn for sale to anyone since April 1970?

A. I think we have quoted on it, but I don't remember.

Q. You just don't know; is that right?

A. No, sir, I think we have quoted on it, but I don't remember specifically.

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[3255]

Q. Now, Mr. Rudo, can you tell us whether or

[3256]

not Interstate Lanes was for sale?

A. Yes.

Q. Is for sale?

A. Yes, it is.

Q. Can you put a price on it?

A. Would I put a price on it?

Q. Yes, here on the witness stand. You are making an offer.

A. I won't figure that because I am not familiar—but I will be glad to get one for you.

Q. You can't figure it out yourself?

A. Oh, if I would take the time to do it, I am sure I could.

Q. Can you apply the formula which you described in your testimony?

A. I think I could, yes.

Q. I can give you the information about the profit and loss of Interstate Lanes; would that be useful?

I can also give you the cash flow about Interstate Lanes.

A. I'm sorry, I am not going to do it here.

Q. When you say you are not going to do it, you mean unless the Court instructs you to do it?

A. If I were instructed I had to, I'd do the best I could.

[3257]

Q. You could give us the price that you would have quoted to Mr. Lieblich had you quoted a price to Mr. Lieblich because you have written it down; is that right?

A. Yes.

Q. Can you give us any other price that isn't written down on any one of the 165 or so centers which I will be glad to give you which are in evidence here as Plaintiffs' exhibit 48?

A. I remember distinctly Rose Bowl was sold for $502,000, 24 lanes center.

Q. I am not talking about a transaction that took place in the past. You are prepared to make offers in this courtroom, and you were prepared to do it in 1970.

Will you make an offer on any one of these centers, sir, other than Interstate Lanes and—I'm sorry, other than Fair Lawn, and tell us how you reach your offer, what calculation you used?

A. I would be glad to have a price figured for any bowling center you or your associates may be interested in, and have a salesman here who can write a contract and take care of it.

I have not figured prices, I am not about to, but I am interested in seeing that a sale is made, and I

[3258]

would you like to see the color of Mr. Lieblich's checks or yours as a down payment.

Q. And you have with all this interest of yours in seeing that sales are made, you have succeeded in seeing that sales are made nine times; is that right?

A. No—

The Court: Why is the color of the check important?

The Witness: I was using a colloquialism. I was talking about money, I was talking about green stuff.

• • •

[3259]

Q. If your prices are so sincere, so legitimate, how was it possible that over nine years you only sold about a center a year out of some 200 more, 220 was the figure we agreed on, centers which Brunswick offered?

[3260]

You did better with bowling balls, I am sure, than one a year.

The Court: Let him answer the first one.

(Record read.)

A. I have answered this question twice or three times this afternoon, sir. It was my opinion that the equipment on the market, and there are hundreds and thousands of units available, have hurt the sale of any of our units—of any of our centers, and this is my feeling.

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[3261]

Q. Mr. Rudo, I show you what has been marked as Plaintiffs' 67 for identification.

Can you by looking at it tell us whether that's the copy of the lease which Brunswick entered into with the Rahway Recreation—

A. To my knowledge it is, yes.

[3262]

It looks that way.

Q. Looks like the one Mr. McNeill was examining you about yesterday, doesn't it?

A. I never saw it in the courtroom before now.

Q. Now, Mr. Rudo, I am going to ask you to just look through this whole document with me briefly.

Do you notice the first part of it, ending here with the signatures, in the middle somewhere?

A. Yes.

Q. That is, if you look at it, that is the signature to the lease, is it not?

A. Yes.

Q. And the signature for Brunswick Corporation is your own, is it not?

A. And there are three initials there.

Q. What do those three initials mean?

A. One of them, one's name is Mr. Irons, Mr. Schofield and Mr. Bernard Rudo.

Q. What is the significance of having those initials there?

A. Yes, very important.

Q. What is it?

A. I don't read every document that crosses my desk for signature. We set policies, and the lawyer, I will not sign it unless there is a lawyer's initials and the

[3263]

operating people's initials.

This says to me that they are confirming and conforming with our policy.

Q. Does this mean that while you were signing it there was a lawyer standing by?

A. No, sir, that means he read it over and approved it.

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[3264]

Q. You testified, if I understood you correctly,

[3265]

before in direct examination that you didn't know that there was an option agreement; is that right?

A. I didn't realize what the—I personally did not realize the option agreement was there, yes, sir; I testified to that.

Q. You signed the option agreement and you had your lawyer initial the option agreement, and you didn't know; is that your testimony?

A. That's right, sir.

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